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PROPERTY AND JUSTICE:  
A CRITICAL AND HISTORICAL STUDY  
OF LOCKE'S LIBERALISM

A Thesis Submitted for the Degree of  
Doctor of Philosophy

In the Department of Philosophy  
At the University of Glasgow

by  
Kiyoshi Shimokawa  
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## ACKNOWLEDGEMENTS

In preparing this dissertation, I have incurred numerous debts. I should like to express my special thanks to those whose help and encouragement have been prominent.

First, I wish to express my special appreciation to my supervisor, Prof. Robin Downie, for the constant encouragement which he gave me during the whole period of my research. I originally intended to write a grand thesis on "two theories of property", dealing with Locke in the first part and Hume in the second. I was to explore the radically different "philosophical foundations" of the two "theories of property". After spending nearly two years on this project, however, I came to a deadlock. I felt that I had been involved with a deeply confused project. Though I hesitated to destroy what I had written, I began to destroy it. I secluded myself from the outside world, and immersed myself in the vast ocean of historical and academic details. I left Hume aside, and concentrated on Locke. Then I was able to see my old project as the project of a drug addict — one who is addicted to the foundationalist picture of philosophy. During this difficult period, Prof. Downie remained sympathetic. He encouraged me, and waited for the completion of my work with superhuman patience. I deeply appreciate the moral support he offered me. Without it, I might have abandoned the whole dissertation. Or I might have spent twenty more years to complete it.

Secondly, I should like to mention a Japanese philosopher who inspired me to study British philosophy. I met Prof. Shigeo Komatsu six years ago in Tokyo. Though I knew him only for a short period of time prior to his unexpected death, he kindled my interest in "moral" (or "civil") philosophy. In the chaotic aftermath of the collapse of Japanese fascism, he had produced an excellent Japanese translation of Hume's Political Discourses. He remained one of the most learned, genuinely liberal philosophers in post-1945 Japan. On one occasion, he remarked that Pufendorf is a good guide for the understanding of Locke. On another occasion, he suggested to me that we should discuss "property" and "justice" if we are dealing with Locke or Hume. He made these points firmly in the middle of our freely floating conversation, though he did not elaborate them. In those days, I only had a vague idea about what he was talking about. But in preparing the present dissertation, I have often felt that he gave me wonderful clues to my problem.

In Glasgow, various members of the teaching staff were helpful at early stages of my research. Besides Prof. Downie, I should mention two philosophy lecturers who assisted me. I discussed Locke with Mr. Dudley Knowles, and Hume with Mr. Paul Brownsey. I benefited from those discussions, though very little of what we discussed remains in the present work.

On the practical side of writing up this dissertation, I have been assisted by two excellent typists and one great friend. Ms. Anne Strachan typed nearly a half of the dissertation, while Ms. Susan Meikle typed the other half. I appreciate their efficient typing. I thank Mr. Alan Stewart for checking my spelling and removing some inelegant expressions. He can now concentrate on writing his wonderful plays, without interruption.

Financially, I am indebted to Glasgow University for awarding me with a Postgraduate Scholarship over the period of three years, and to the Committee of Vice-Chancellors and Principals for an ORS Award over the same period.

Lastly, I should like to express my thanks to my family in Tokyo. Despite my un-Confucian behaviour of not returning home, they have sent me sympathetic letters. So I have been able to devote myself to my work in Glasgow.

K. S.



## ABBREVIATIONS

### 1. Locke's Works

Correspondence: The Correspondence of John Locke, 8 vols.,  
ed. E.S.de Beer (Oxford: Oxford University Press, 1976).

Essay: An Essay concerning Human Understanding, ed. P. H. Nidditch  
(Oxford: Oxford University Press, 1975).

ELN: Essays on the Law of Nature, ed. & trans. W. von Leyden (Oxford:  
Oxford University Press, 1954).

FT: The First Treatise; or the first part of Two Treatises of  
Government, ed. P. Laslett (2nd ed. 1967; rpt. Cambridge:  
Cambridge University Press, 1970).

ST: The Second Treatise; or the second part of the Two Treatises of  
Government.

F. Tract: The First Tract; or the first part of Two Tracts of  
Government, ed. P. Abrams (Cambridge: Cambridge University  
Press, 1967).

S. Tract: The Second Tract; or the second part of the Two Tracts of  
Government.

Works: The Works of John Locke. 10 vols. (London: Printed by Thomas  
Davison, Whitefriars; Printed for Thomas Tegg, et al, 1823).

These abbreviations are combined with numerals to identify smaller  
segments of Locke's works. Words like "Bk" "Ch" and "Sect" are  
frequently omitted.

<u>Correspondence</u> , IV, 256	=	<u>Correspondence</u> , Vol. IV, p. 256.
<u>Essay</u> , I, ii, 3	=	<u>Essay</u> , Bk. I, Ch. II, Sect. 3.
<u>ELN</u> , I, 111	=	<u>Essays on the Law of Nature</u> , the first essay, p. 111.
<u>FT</u> , 25	=	<u>The First Treatise</u> , Sect. 25.
<u>ST</u> , 25	=	<u>The Second Treatise</u> , Sect. 25.
<u>F. Tract</u> , 164	=	<u>The First Tract</u> , p. 164.
<u>S. Tract</u> , 219	=	<u>The Second Tract</u> , p. 219.
<u>Works</u> , VI, 45	=	<u>Works</u> , Vol. VI, p. 45.

## 2. Biographical Works

Bourne, <u>Life</u> :	Bourne, <u>The Life of John Locke</u> .
Cranston, <u>Life</u> :	Cranston, <u>John Locke: A Bibliography</u> .
King, <u>Life</u> :	King, <u>The Life of John Locke, with Extracts from his Correspondence, Journals, and Common-Place Books</u> .

(For detailed information about these works, see BIBLIOGRAPHY at the end of this dissertation).

## 3. Works by 17th-Century Theorists (Hobbes, Grotius, and Pufendorf)

<u>De Cive</u> :	Hobbes, <u>De Cive</u> . Ed. H. Warrender (Oxford: Oxford University Press, 1983).
<u>Leviathan</u> :	Hobbes, <u>Leviathan</u> . Ed. C.B. Macpherson (Harmondsworth: Penguin Books, 1977).
<u>De Jure Belli</u> :	Grotius, <u>De Jure Belli ac Pacis Libri Tres</u> . All quotations are from William Evats' English translation (1682) unless otherwise specified.
<u>De Jure Naturae</u> [A]:	Pufendorf, <u>De Jure Naturae et Gentium Libri Octo</u> . Translation by C.H. Oldfather and W.A. Oldfather (1934).
<u>De Jure Naturae</u> [B]:	Pufendorf, <u>De Jure Naturae et Gentium Libri Octo</u> . Translated by Basil Kennet (1717).
<u>De Officio Hominis</u> :	Pufendorf, <u>De Officio Hominis et Civis Juxta Legem Naturalem Libri Duo</u> . All quotations are from Frank Moore's English translation (1927) unless otherwise specified.

(For detailed information about the editions of the works of Grotius and Pufendorf, see BIBLIOGRAPHY).

## 4. Works by 18th-Century Theorists (Hume and Smith)

- ENQ: Hume, Enquiries; or Enquiries concerning Human Understanding and concerning the Principles of Morals. Ed. L.A. Selby-Bigge, 3rd ed. revised by P.H. Nidditch (Oxford: Oxford University Press, 1975)
- GG: Hume, Essays; or Essays, Moral, Political and Literary. 2 vols. Ed. T.H. Green & Grose (London: Longmans, Green & Co., 1875).
- THS: Hume, Treatise; or A Treatise of Human Nature. Ed. L.A. Selby-Bigge, 2nd ed. revised by P.H. Nidditch (Oxford: Oxford University Press, 1978).
- LJ: Smith, Lectures on Jurisprudence. Ed. R.L. Meek, D.D. Raphael, and P.G. Stein (Oxford University Press, 1978).
- LJ (A) Report of 1762-63
- LJ (B) Report dated 1766
- TMS: Smith, The Theory of Moral Sentiments. Ed. D.D. Raphael and A.L. Macfie (Oxford: Oxford University Press, 1976).

## PREFACE

1. This dissertation attempts to provide a scholarly interpretation of Locke's political theory, the interpretation which reveals him as a classical liberal who defended property and justice. The major task of this dissertation is to elaborate this interpretation, and defend it against all major alternative interpretations. This task is performed in INTRODUCTION, CHAPTER 1, and CHAPTER 2. The interpretation I offer is based on Locke's texts, and the writings of his 17th-century predecessors and 18th-century successors. Appendix 1 criticizes Peter Laslett's "historical" approach to the Two Treatises. Appendix 2 criticizes a "philosophical" approach to Locke's political theory. I shall reject those approaches, and show the overall soundness of my approach to Locke's political theory.

2. A subsidiary task of this dissertation is to criticize Locke's liberal political theory. CHAPTER 3 criticizes the concept of property which he uses in his political theory, by offering a detailed analysis. CHAPTER 4 criticizes his political theory by showing how it disintegrates with the erosion of its basis, i. e., a myth of appropriation. However, the present study is not intended to offer a full-scale critique of Locke's theory. It merely shows how his theory can be criticized on the basis of the interpretation provided in this dissertation. The major purpose of the present work is to understand Locke rather than criticize him. A systematic critique of his liberalism would have to take into account the whole classical-liberal tradition which developed after Locke. Such a task goes far beyond the scope of this dissertation. A large portion of the present study embodies

the Spinozist motto: "non ridere, non lugere, neque detestari, sed intelligere" ("Smile not, lament not, nor condemn; but understand").

3. But is it difficult to understand Locke's liberal political theory? His Second Treatise is not a difficult book, and any educated person can understand the gist of what he says without any special difficulty. Nevertheless, anyone who aims at a deeper understanding of his political philosophy is bound to face certain obstacles. I should like to mention three obstacles here, and indicate how I have tried to overcome them in the present study.

3. 1 First, there is a vast amount of literature on Locke, and there have been quite a few interpretive disputes about various parts of his political theory over the past few decades. I have discovered that this literature is an obstacle, rather than an aid, to the understanding of Locke's political theory. I have carefully examined recent scholarly works, and have come to the conclusion that a majority of recent commentators live in Plato's Cave. They comment on shadows of Locke, and comment on those who have commented on those shadows. Though there are a few exceptional scholars, many commentators — especially, leading Locke scholars — live in this Cave.

At the initial stage of my research, I thought I might be staying in a cave. But I spent quite a number of days in the Special Collection Room of Glasgow University Library, and quite a number of nights at home, trying to understand what Locke wrote. Then I began to see that scholars such as Peter Laslett, John Yolton, C. B. Macpherson, John Dunn, etc. are the cave-dwellers who make it difficult for us to understand what Locke really meant. The works by recent scholars, with the

exception of a few, are a great obstacle to the understanding of what his political theory is about. I have overcome this obstacle by criticizing their views. In fact, CHAPTER 2 ("Locke and Modern Illiterates") is wholly devoted to the views of recent scholars. But I have also made a number of critical comments in my extensive notes. To some readers, my critical comments may sound too harsh at times.\* But I have made those comments in the conviction that dwelling in a cave is bad for our intellectual health. In criticizing the views of established scholars, I have adopted Nietzsche's maxim rather than the Spinozist motto: "Objection, evasion, happy distrust, pleasure in mockery are signs of health: everything unconditional belongs in pathology."

3. 2        A second obstacle I have tried to overcome is connected with Locke's status as an independent philosopher. Since I attempt to offer a scholarly interpretation of his political theory, I make use of the writings of his predecessors such as Hobbes, Grotius and Pufendorf. But this scholarly approach has limited utility, and it is dangerously misleading. Locke is a modern philosopher who aspired to be independent, and refused to be influenced by the views of his predecessors and contemporaries. All his writings, from the Preface to the unpublished First Tract on Government to The Reasonableness of Christianity, reveal that Locke developed his own thought by his own intellectual labour. James Tyrrell, who was more interested in the gossip and rumours of his contemporaries, wrote to Locke in 1690: "you utterly refused to reade any bookes upon that subject [concerning human understanding]: that you might not take any other mens notions: and that you have taken another course since that time I did not beleive [sic]" (Correspondence, IV, 36). Locke practiced the policy

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\* From time to time, I use the word "illiterate". The word has to be taken in its literal sense. It is not intended to be a term of abuse.

of independent thinking which he advocated in his Essay. He read extensively, and absorbed a variety of ideas from other theorists. But he did not swallow those ideas. He digested them by his own "meditation". "Reading", said Locke, "furnishes the mind only with materials of knowledge; it is thinking [that] makes what we read ours." We can turn the materials into knowledge "only by our own meditation"; we must "chew them over again" (Works, III, sect. 20). With respect to politics, Locke remarked: "I am so little acquainted with books, especially on those subjects relating to politics." And politics "require[s] more meditation than reading." (Works, X, 308 & 309.) Given Locke's policy of independent thinking (or his own "meditation"), it is not easy, nor very fruitful, to discuss the sources of his political ideas. We should, above all, avoid loose talk about the "influence" of this or that theorist on Locke. An intellectual historian's broad brush is too coarse for his independently cultivated thought.

This poses a special difficulty for anyone who tries to produce a scholarly interpretation of Locke's political theory. Is it possible to offer one? The need for a solid scholarly work on his political theory is great, given the deplorable chaos of present-day Locke scholarship. My solution to this difficulty is to use his predecessors' (and successors') writings, for the purpose of clarifying Locke's own meaning rather than determining the precise source of his ideas. I have made extensive use of their writings, in order to clarify Locke's concepts of justice and property. Aristotle and Cicero as well as Grotius and Pufendorf are used for this purpose. These four names appear on the reading list Locke recommended for a study of politics and morality (Works, III, 296; IX, 176; and X, 307f.).

I have used Hobbes' writings not because Locke studied them carefully, but because Pufendorf studied them carefully and transmitted some Hobbesian ideas to Locke. I have also used the writings of Hume and Smith despite the fact that they came after the publication of the Second Treatise. The reason for this is that Hume and Smith clearly express the harmonious relationship between justice and property, and in this respect what Locke said can be clarified by reference to what they said. My use of the works of other theorists is intended to serve a clarificatory, rather than antiquarian, purpose. Only in a few cases I have presented some interesting connections between Locke and his predecessors to satisfy our antiquarian interests.

3. 3        The third obstacle concerns the very nature of Locke's political theory. It is often described as a "normative" political theory, and as such it is distinguished from an "empirical" theory of government. This characterization, however, is not quite accurate. The distinction Locke drew between "two parts" of politics is fairly well known: one part concerns "the original of societies, and the rise and extent of political power", while the other concerns "the art of governing men in society" (Works, III, 296). This distinction is often thought to correspond to the simple distinction between a "normative" theory and an "empirical" theory. There is no denying that a study of "the art of government", according to Locke, is more concrete (or more "empirical") than the first, general branch of politics. The art of government, he says, can be best "learned by experience and history, especially that of a man's own country" (ibid.). It is an empirical study of the laws and institutions of a particular country. On the other hand, the general branch deals with the norms



and facts about a political society which go beyond one particular country. Locke variously describes this branch of politics: It is a "general part of civil law and history" (Works, IX, 176). The word "history" here suggests that experience is not ignored in this branch. It concerns "the natural rights of men, and the original and foundations of society, and the duties resulting from thence" (ibid.); or "the ground and nature of civil society; and how it is formed into different models of government; and what are the several species of it" (Works, X, 307). Locke suggests that this branch of politics serves as a "foundation" for a study of the art of government, and offers "an insight" into the particular constitution of government (ibid.). From these descriptions, we can infer that the general branch of politics deals with the general facts and norms about men, the origin of society, the ground of political power, and different forms of government.

Now I have drawn attention to Locke's characterization of the general branch of politics. This is because his own political theory deals with this branch. Locke is explicit about this, and he adds that Pufendorf's De Jure Naturae et Gentium is "the best book" that deals with this branch (Works, III, 296). Locke's political theory somewhat resembles one of those Open University "foundation" courses which bear a general title such as "man, society, and politics". But there is something peculiarly obscure about the way in which Locke talks about the "original and foundations" of society, or the "general part" of civil law and history. The subject-matter is abstract, and it intermingles facts and norms. Though this abstractness is common to any modern theory of natural law and natural rights, it becomes an acute problem in Locke's political theory. Throughout the Second

Treatise, he abstracts from concrete facts and universal norms by mixing them together. He presents either an idealized, universalized version of specific events that took place in 17th-century England, or a factual ("factualized") version of universal principles of politics, law, and morality. In short, the abstractness of his political theory is not the abstractness of abstract principles. It is the abstractness which arises from the obscure way in which Locke mixes what happened in 17th-century England with what ought to happen in the ideal, universal world. A careful reader would notice that his political theory of the Second Treatise becomes more and more concrete and empirical as we approach toward the end of the book. In the beginning of the book, he discusses "the state of nature" and "mankind". Indeed, "mankind" has not been split into political societies at this stage. There is, therefore, a general movement from abstract normative principles to concrete empirical events in the Second Treatise. Nevertheless, over and above this general movement of thought, there is an obscure mixture of facts and norms, of what happened in 17th-century England and what ought to happen in the whole world. This mixture is most conspicuous in Chapter 5 of the Second Treatise, "Of Property".

I shall not dwell on this obscure mixture here. I should only like to indicate that there is a mixture in Locke's political theory. And I should like to indicate how I have coped with this peculiarity. I have analyzed Locke's admixture of what happened (in a particular place and at a particular time) and what ought to happen (universally), but in the end I have treated it as a myth. I shall not treat the whole of Locke's political theory as a myth. But I have treated his account of appropriation as a myth, the story within which what ought to

happen actually happens. I believe that this treatment can be justified. I also believe that by treating certain parts of Locke's political theory as mythological, we are able to appreciate his status as a political philosopher. He is an articulator of beliefs. He articulates the political and economic beliefs of the modern age. This treatment would also enable us to criticize his political theory. It is "ideological" – not in the sense that it is intentionally propagandistic, but in the sense that his theory remains coherent by virtue of the projection of his beliefs and ideas onto the world that exists. His political theory loses its coherence, once we treat this projection as the chimera of his brain. It is not accidental, therefore, that Hume – the first anatomist of chimeras of our brain (e.g., the argument from design, the idea of necessary connection, etc.) – is the first major theorist who criticized Locke's political theory.

I have indicated above how I have overcome the third obstacle – the peculiar abstractness of Locke's political theory. Just like the first two obstacles (namely, the vast secondary literature on Locke, and his independence from other theorists), this obstacle must be removed if we are to probe deeply into Locke.

4. Finally, I should mention the fact that I have produced the whole dissertation by a method somewhat similar to Locke's – by a "discontinued way of writing" (Essay, The Epistle to the Reader). Also, I originally wrote certain parts of it for the purpose of publication. For these reasons, there is a certain amount of overlap in the contents. (For instance, Grotius' definition of "a right" is quoted in more than one place.) I hope that the overlap is not intolerable, and I would appreciate it if the reader could treat it as a virtue rather than as a vice. It does save the trouble of going back and forth for the sake of a cross-reference.

## SUMMARY

As it is explained in the PREFACE, the major task of this dissertation is to offer a scholarly interpretation of Locke's political theory, while its minor task is to criticize his political theory. A large portion of this dissertation is devoted to the major task.

INTRODUCTION ("John Locke and Classical Liberalism") presents the broad framework of interpretation which I adopt, the framework of classical liberalism. Classical liberalism can be summed up in the words of Lippmann: "Thus in a free society the state does not administer the affairs of men. It administers justice among men who conduct their own affairs." "Classical liberalism", as I use the expression, is a theoretical tradition. In Britain, Locke, Hume and Smith are the main proponents of classical liberalism. Its chief feature is that it defends the rule of law on the one hand, and the (predominantly economic) liberty of each individual man on the other. The state, on this view, is a predominantly judicial entity while private men are predominantly economic beings. Classical liberalism is the doctrine which asserts that there is, and ought to be, a harmony between law and liberty; or between public justice and private property. Locke's political theory belongs to this species of liberalism.

CHAPTER 1 ("Property and Justice: An Exposition of Two Major Components of Locke's Liberalism") offers a detailed exposition of Locke's classical liberalism. There are two major components of his liberalism: his account of appropriation in Chap. 5 of the Second Treatise, and his theory of the bounds of the legislative power in Chap. 11 of the Second Treatise. The former explains how men have, and ought to have, determined their exclusive domains of disposal in

the material world of common goods. To put it simply, it is an account of the origin of property. The second component of Locke's liberalism specifies the limits of the supreme power of the state. Its central claim is that the state ought to administer justice (instead of settling disputes arbitrarily). The task of CHAPTER 1 is to clarify each component of Locke's liberal political theory, and how one component is related to the other. PART 1 offers a detailed exposition of Locke's account of appropriation, together with a discussion of the connecting links between his account of appropriation and his claim about the state's obligation to administer justice. PART 2 discusses Locke's theory of the bounds of the supreme power of the state, with particular reference to his concept of justice.

CHAPTER 1: PART 1 offers a clear and detailed exposition of Locke's account of appropriation, by treating it as a myth. His formulation of the problem of the origin of property is mythical: what is the legitimate manner by which men are likely to have converted the God-given community of things into the proto-17th-century world of property? He offers a story about the beginning, expansion, and settlement of property. He attempts to show that the world of property which resembles the 17th-century world of property emerged from the original community of things by a legitimate process and as a matter of fact. Within his story or myth of appropriation, events in 17th-century England are hardly distinguishable from events in the distant past; and what ought to happen now seems to have happened long ago. Sect. 1. 2 of PART 1 analytically shows what is in this story. Sect. 1. 3 is an extended discussion about the purpose of Locke's story of appropriation. The purpose is to protect men's present possessions by positive laws

against the arbitrary power of the state. Or to put it another way, the purpose is to claim that the state ought to administer justice among those men who have acquired their possessions by their labour, commercial exchange, and their ancestors' labour. This purpose lies outside of Locke's account of appropriation. Within his account, he obliquely claims that 17th-century men's possessions are legitimate possessions – or "properties" – because they are the consequence of the legitimate mode of acquisition and exchange. Once he obliquely establishes the pre-political legitimacy of 17th-century men's possessions, he can claim that men's possessions in the 17th-century as well as their lives and liberties are their "properties", or the objects of their exclusive rights of disposal. If he can establish this claim, then he can defend the claim about justice (and also the claim about legitimate taxation). This is why Locke tries to establish the pre-political legitimacy of 17th-century men's possessions. This purpose implies, of course, that he is trying to defend a violence-free economic society of property-owners against arbitrary government. My extended discussion about the purpose of Locke's account of appropriation covers a variety of topics: for example, the point of natural rights in the 17th-century theoretical context (Sect. 1. 3 (1)) and the possibility of the "internal" apprehension of Locke's myth of appropriation (Sect. 1. 3 (4)). The detailed treatment is due to the recent controversy over Locke's purpose, and the misunderstandings which surround it.

CHAPTER 1; PART 2 expounds Locke's theory of the bounds of the supreme power of the state. But it focuses on his concept of justice since his claim about the administration of justice is the central claim of his theory of the state. Locke's concept of justice receives a careful reconstructive analysis, and the negativity of justice is explored. Justice, as opposed to such positive virtues as "charity"

and "liberality", is the negative virtue of abstention. The best way to understand Locke's concept of justice is to treat "justice" as the practical negation of injustice, i.e., the avoidance or correction of injustice. A just act, or the justice of an agent, is an act of abstaining from another man's exclusive right (or "property"); namely, it is to "preserve" another man's "property". Suum cuique tribuere is to leave everyone in the quiet enjoyment of his own objects. The negative concept of a just "act" can be found in Locke. To identify this concept, I first turn to Cicero and modern Ciceronians (Grotius, Hume and Smith), and then pull together Locke's scattered remarks on justice. The administration of justice, or the justice of a spectator, is the impartial execution of equal laws for the purpose of the mutual preservation of men's exclusive rights of disposal ("properties"). This purpose can be rephrased as the maintenance of "justice", provided that we mean by it the maintenance of the not unjust state of affairs, namely, the elimination of injustice from a society of the holders of exclusive rights ("properties"). Locke's concept of justice is the concept of "corrective justice" rather than that of "distributive justice", to use Aristotle's distinction. This "justice" presupposes each man's "property". The state's chief obligation is to "preserve" men's "properties" (i.e., to prevent and correct injustice) as an impartial spectator. This negative justice supports the smooth function of the economic society based on men's labour and voluntary exchange.

CHAPTER 2: Few men treat Locke as a defender of property and justice, i.e., as a classical liberal. CHAPTER 2 ("Locke and Modern Illiterates") examines the interpretations of Locke's political theory offered by recent scholars and philosophers. In PART 1, I examine one popular view and four interpretations of his account of appropriation.

The four interpretations offered by academic commentators are "philosophical" (Becker, Day, et al.), "neo-Kantian" (Yolton and Tully), "pseudo-Marxist" (Macpherson), and "historical-revisionist" interpretations (Laslett and his followers). These interpretations are criticized severely, and rejected once and for all. They are either inadequate, partial accounts of what Locke says; or plainly false, groundless rumours. Macpherson's interpretation and Laslett's are two of the most influential interpretations. The largest space is devoted to their views. My criticism demonstrates that Macpherson can read neither Locke nor Marx, and that Laslett's attempt to link Locke and Filmer is indefensible on the historical as well as rational grounds. Other scholars who have followed Laslett's lead in their self-consciously historical mission (Dunn, Tully, Kelly, and Ryan) are shown to have repeated Laslett's groundless claim.

In CHAPTER 2, PART 1, Cambridge Historical Revisionism is shown to be bankrupt. In CHAPTER 2, PART 2, I examine interpretations of Locke's concept of justice briefly. Commentators have had confused discussions about his concept of justice. The most conspicuous confusion is to ascribe the concept of distributive justice to Locke. Both John Dunn and James Tully suffer from this confusion, and the latter's interpretation has received laudatory comments from other scholars. My analysis of Locke's concept of justice in CHAPTER 1, PART 2, reveals that their views — and their excitement — are wrong-headed. CHAPTER 2 is designed to undermine the authority of recent scholars.

CHAPTER 1 and CHAPTER 2 establish the authenticity of my scholarly interpretation of Locke's political theory beyond any reasonable doubt. Locke is a classical liberal who defended property and justice. To put it more accurately, he defended "justice" against



arbitrary government. He defended "justice" for the sake of the mutual preservation of men's "properties"; hence, for the sake of the smooth function of the modern economic society where every man minds his own business, or his own "property".

CHAPTER 3 ("Locke's Concept of Property") is a second-order inquiry. It offers a detailed analysis of Locke's concept of property, by combining historical scholarship with philosophical criticism. Though some of the claims made in this chapter support my interpretation of Locke's political theory, this chapter is on the whole independent of the major task of this dissertation. It analyzes, and criticizes, the concept of property which he uses in his political theory. Hence, it offers a critique of Locke's political theory at a second-order level, or at the level where he uses concepts. PART 1 ("Images and a Reconstruction of the Meaning") separates Locke's loose images about property from his strict meaning of the word "property". Property, strictly speaking, is a man's exclusive right of disposal; or the object of his exclusive right of disposal (where the "object" in question is determined by the substance of Locke's discourse). PART 2 ("An Analysis of Locke's Concept of Property") examines the way in which various entities (a man's mind, power, body, material objects, law, other men) are related to each other, when a man is said to have "a property in" an object. Locke arranges these entities in a definite manner, when he speaks about property. He treats each man's mind as the central decision-making agent, and uses his non-normative liberty of action as the basis of his exclusive right of disposal. Since the mind is the indispensable core of this concept of property, it is called the ego-centric concept of property, or the agent-centred concept of property.

PART 2 of CHAPTER 3 thoroughly explores the ego-centric structure of Locke's concept of property. It examines the core of Locke's concept of property first: a man's right of disposal (Sect. 2. 2). It then examines the fringe of his concept of property: the exclusiveness of a man's right of disposal (Sect. 2. 3). Since no detailed analysis of Locke's concept of property has been offered since the publication of the Second Treatise, I devote a number of pages to the clarification of his philosophical assumptions about property (in the strict sense). I begin by showing that Locke belongs to the modern tradition of natural, subjective rights which tried to separate a right from a law, and assimilated a right to a man's power (or liberty) (Sect. 2. 21: A Right as a Species of Power: A Historical View). From Pufendorf in particular, Locke takes over a moderate version of the doctrine of the bifurcation of a law and a right. He maintains that though a right is distinct from a law, a right is a man's liberty (or power) under the restraints of a law. After a historical survey, I attempt to anatomize the core of Locke's concept and criticize it. A right of disposal over X is a man's liberty to dispose of X according to his will, within the bounds of the laws he is under. This complex locution is Locke's own. It consists of two unit-ideas: "a liberty of disposal" and "the bounds of a law". Each unit-idea is clarified, and a certain amount of conceptual confusion is pointed out (Sect. 2. 22 (A) and (B)). A man's liberty to dispose of (i.e., control or arrange) his body, actions, and possessions is a particular species of the general liberty of action which Locke discusses in the Essay, II, xxi. The idea of "the bounds of a law" is explicable in terms of the causal power and right which a law-maker has. A combination of the two unit-ideas yields Locke's idea of "a right of disposal". This idea, however, is a confused idea of a right (Sect. 2. 22 (C)). First of

all, a law does not impose an obligation on a variety of actions, and in that case a man's right to dispose of X becomes identical with his non-normative, natural ability to do (or not to do) what he wills with X. However, this is a sheer conflation of the normative entity which ought not to be violated by others and each man's introverted, ability to control his actions (by the power of the mind). This confusion brings about many absurd consequences: e.g., a man can lose a right to own his house by drinking Scotch, and ceasing to be "a free agent" *at home*. Secondly, even if a law restrains certain actions, a right is not an agent's positive liberty consistent with the law. Rather, an agent's liberty is called a right if the law prohibits other men from taking his liberty. All rights presuppose an intersubjective norm. Locke's formula, "cogito ergo meum (id est)", is palpably false, and we must look at a rule-governed institution rather than the relationship between a man's mind and actions, if we want to understand what a right is. The modern tradition of subjective rights rests on a series of inventions rather than any sound philosophy. After a careful anatomy of the core of Locke's concept of property, I turn to its fringe and briefly clarify what it means to say that a man has an exclusive right (or that his right of disposal is exclusive). (Sect. 2. 3). Finally, I make concluding remarks to suggest that we should abandon Locke's concept of property, if we are to theorize on property and a right. I also suggest, however, that his informal notion of property serves our everyday purpose. (Sect. 2. 4.)

CHAPTER 4 ("Locke's Liberalism: A Critical Assessment") attempts to criticize Locke's liberal political theory. It tries to show how his liberal political theory disintegrates when its basis — his account of appropriation — gets undermined. There are many ways in which we

can criticize Locke's political theory. But since CHAPTER 4 is not designed to offer a full-scale critique of his liberalism, I simply show one easy way in which we can see how his political theory loses its coherence. As I have shown in CHAPTER 1, Locke's account of appropriation is a myth which mixes what happened in the past and what ought to happen in the 17th century. His theory of the state — his claim about the state's obligation to administer justice in particular — rests on the myth that men's current possessions are in fact the consequence of the legitimate acquisition and exchange of goods in the past. If appropriation did not take place in the same way that Locke says it did, then his account of appropriation fails to establish the legitimacy of present possessions. But everyone knows that his story is a fairy-tale, or a wildly exaggerated story. So by raising a historical objection, I criticize Locke's ideological distortion and show how the disintegration of his account of appropriation affects the rest of his political theory.

CHAPTER 4 is relatively short, and I do not intend to offer any balanced assessment of Locke's political theory. Its purpose is merely to present an example of criticism rather than any balanced evaluation or a full-scale critique. It is to show what type of criticism will become possible, once we understand his political theory properly — namely, in the way I have understood it in CHAPTER 1.

There are three appendices. Appendix 1 and (a long) Appendix 2 can be read as self-contained critical pieces, while Appendix 3 is somewhat dependent on my discussion in PART 2 of CHAPTER 3.

Appendix 1 ("A Critique of Laslett's Treatment of the Two Treatises") criticizes Peter Laslett's view that Locke wrote the Two Treatise in response to the Exclusion Crisis and with the primary

objective of refuting Filmer's doctrine of absolute monarchy. One of Laslett's serious mistakes is to treat the Second Treatise as a refutation of Filmer's works. Laslett himself has discovered that Locke wrote a substantial portion of the Second Treatise before the First Treatise, and before he read Filmer's Patriarcha. Nevertheless, he believes (without sufficient evidence) that Locke wrote the Second Treatise to refute Filmer. His extensive, editorial comments are based on this groundless belief. Laslett's edition of the Two Treatises, scholarly as it is, has created a tendency among commentators to attach tremendous significance to the Locke-Filmer connection. I hold that Laslett is deeply misguided. We should treat Filmer as an intellectually insignificant opponent of Locke, and Locke's political theory of the Second Treatise as largely independent of Filmer's doctrine. (For my account of the development of Locke's political theory, see Appendix 2, Sect. III, (i).)

Whereas Appendix 1 criticizes Laslett's "historical" approach to Locke's political theory, Appendix 2 criticizes a "philosophical" approach to it. Appendix 2 is entitled "Locke's Political Theory and its Epistemological Foundations: A Systematically Misguided Project". The relationship between Locke's political theory and his epistemology has been discussed occasionally by commentators. But there has never been a satisfactory account of how the two are related to each other. I attempt to offer a complete account. Since my answer is intended to be complete, this is a long "appendix". I perform two main tasks. First, I criticize the attempts, made by M. Milam, J. Yolton, and J. Tully, to treat Locke's epistemological doctrines as the foundations of his political theory (especially, his account of appropriation). Their

attempts are systematically misguided. Sect. II of Appendix 2 shows how misguided they are. Secondly, I perform a task of liberation. I try to liberate every commentator on Locke (including any future commentator) from the futile project of searching for the "epistemological foundations" of Locke's political theory in the Essay. Section III of Appendix 2 is devoted to this task.

The systematic confusion from which Milam, Yolton and Tully suffer has a fundamental cause. They are addicted to the "foundationalist" picture of philosophy. This picture of philosophy, or this meta-philosophy, treats "epistemology" (or methodology) as the "basis" on which the superstructure of "political theory" (or any other branch of social or natural sciences) stands. This picture may appear to be upside down to those who are intellectually healthy. But many academics are addicted to this meta-philosophical drug. This is an opium of the intellectuals which originally grew in Germany in the latter half of the 19th century. Locke did not take this opium, unlike many recent scholars. Sect. II of Appendix 2 shows how horrible the effects of this opium are. Sect. III provides a complete cure for this philosophical disease. It provides a new picture of how Locke's political theory is linked to his epistemology, the picture of two discourses horizontally linked by a few non-epistemological themes. According to the new picture it provides, Locke discusses knowledge, politics, and toleration by using a common strategy of demarcating the proper domain of an agent (or its power), for the common purpose of ending disputes among agents. The unity of his philosophical corpus can be best explained in terms of his deep-seated concern with "property" and "justice". (For this point, see Sect. III, (ii) of Appendix 2.) The task of liberation performed in Appendix 2, if it is successful, will put an end to

the sick, neo-Kantian approach to Locke – the ideological inversion which began in Germany more than a century ago, and spread over to various academic institutions of the present-century.

Appendix 3 is a supplement to my analysis of Locke's concept of property. It is entitled "Locke's Ego-Centric Concept of Property, with Special Reference to 20th-Century Commentators and 17th-Century Theorists". It performs two tasks. First, it surveys 20th-century commentators' inadequate understandings of Locke's concept of property. Secondly, it tries to show that his concept of property is strongly ego-centric in comparison with Hobbes', or Grotius', or Pufendorf's. Locke's concept of property is ego-centric in the sense that the mind, or the agent, is an indispensable basis of this concept. But it is ego-centric in a stronger, full-blooded sense as well: the real presence of other men is not required for the intelligibility of the concept of property. In this respect, he is unique among other major theorists of the 17th century. Appendix 3 should be read in conjunction with PART 2 of CHAPTER 3.

To conclude the present summary: This dissertation consists of PREFACE, INTRODUCTION, four CHAPTERS, three APPENDICES, and extensive NOTES. From the author's viewpoint, these ingredients are of equal importance. The appendices and notes are not merely "appended" to the main body of the dissertation. They contain ideas as well as references, and critical remarks as well as some hitherto unknown information.

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## **INTRODUCTION**

### **JOHN LOCKE AND CLASSICAL LIBERALISM**

## INTRODUCTION

### JOHN LOCKE AND CLASSICAL LIBERALISM

"Thus in a free society the state does not administer the affairs of men. It administers justice among men who conduct their own affairs." (Walter Lippmann)<sup>1</sup>

In this dissertation, I shall provide an interpretation of Locke's political theory. Though I use the word "interpretation", it is not a creative interpretation born out of my fancy. It is an interpretation solidly based on Locke's texts, and the theoretical writings which he read. Since it can be objectively defended, I prefer to call it an "exposition" of Locke's political theory. In CHAPTER 1, I shall present this exposition (or an objectively defensible interpretation).<sup>2</sup>

The purpose of this Introduction is to indicate the broad interpretive framework within which Locke's political theory can be properly understood. This interpretive framework is "classical liberalism". I regard Locke as a classical liberal. This claim might appear to be banal. After all, many commentators classify Locke as a "liberal", and some add the adjective "classical". Nevertheless, the word "liberal" has been used in a very liberal manner to designate diverse institutions and ideas. So we need to specify what we mean by a "liberal" or "liberalism".

What do we mean when we say, "Locke is a liberal", or "Locke is the founder of liberalism"? There is no consensus among scholars as to what makes Locke a liberal. Some commentators claim that

he is a tremendously illiberal theorist. I shall leave aside all interpretive disputes, and offer a brief explanation of what I mean by a classical liberal. Without going into the details of his political theory, I should like to identify the tradition of classical liberalism and briefly characterize its salient features.

I intend to use the word "liberalism" (or "classical liberalism") to designate a theoretical tradition rather than a political movement. I use the adjective "classical" to distinguish this brand of liberalism from the post-Benthamite liberalism which advocates legal reform. Locke is a founder of this tradition. It is tradition known as "liberal constitutionalism". "Liberal constitutionalism" is a specific brand of "liberalism". This serves as a useful (if not perfect) description of Locke's political theory. A brief definition may be given here. First, what is "constitutionalism"? A historian of "constitutionalism" states the following:

All constitutional government is by definition limited government ... constitutionalism [in ancient as well as modern forms] has one essential quality: it is a legal limitation of government; it is the antithesis of arbitrary rule; its<sub>3</sub> opposite is despotic government, the government of will.

This minimal definition of "constitutionalism" can be captured in one sentence. In the words of Hume, constitutional government is "a government of Laws, not of Men" (GG, I, "Of Civil Liberty", 151). Given this minimal definition of constitutionalism, it is easy to see that Locke defended "constitutionalism". He defended a government of laws, and attacked arbitrary rule or tyranny. "Where-ever Law ends, Tyranny begins" (ST, 202), and "a Government without Laws" is "a Mystery in Politicks, unconceivable in humane Capacity; and inconsistent with humane Society" (219). Secondly, we should ask why we add an adjective "liberal" to "constitutionalism". The reason seems to be that modern constitutionalism

places greater emphasis on the legal protection of individual "liberty" than ancient constitutionalism. The primary function of laws, according to modern defenders of constitutionalism is the protection of individual liberty. Locke states: liberty "is to be free from restraint and violence from others which cannot be, where there is no Law" (57; emphasis added). Liberal constitutionalism, therefore, is a doctrine which defends both individual liberty and the rule of law.

Locke is one of the first theorists who clearly formulated a liberal-constitutionalist political theory. The heyday of liberal constitutionalism, however, is the 18th century. In Britain, Adam Smith and David Hume greatly enriched this theoretical tradition by developing political economy on the one hand and jurisprudence on the other. They explored two elements of liberal constitutionalism — individual liberty in economic society, and the general laws which the state enforces. In Germany, Kant developed the concept of a universal law which protects the freedom of all individuals. Wilhelm von Humbolt expressed the Lockean idea of the "bounds" of power in the title to his book: "Ideas toward an Investigation to Determine the Proper Limits of the Activity of the State" (1792).<sup>4</sup>

I shall not go into the historical development of liberal-constitutionalist thought. My purpose here is to indicate the broad framework of interpretation which I shall adopt in this dissertation. For this purpose, I have used the label "liberal constitutionalism" and dropped several names. In the remainder of this Introduction, I shall offer a further characterization of this species of liberalism by referring to Locke and his liberal successors.

The label "liberal constitutionalism" is useful because it immediately indicates its opposition to arbitrary government. But its

utility is limited. The term "constitutionalism" suggests that a doctrine in question is a political doctrine, or a political doctrine conceived in the spirit of jurisprudence. Yet modern liberalism in Britain — whether it is Locke's, or Smith's, or Hume's — is based on economic considerations. The individual liberty which is to be protected by a universal law is predominantly "economic" in character. It is, above all, the liberty of individual property-owners. The label "liberal constitutionalism", on the other hand, signifies the regular mode of government, and it draws our attention to the governmental mechanism which prevents the abuse of power. In order to avoid any narrow political connotation, I shall continue to use such expressions as "liberalism", or "classical liberalism", or "liberal political theory". It should be noted that when I use one of these expressions, I refer to a doctrine which defends both the rule of law and the (predominantly economic) liberty of each individual man.<sup>5</sup>

The most concise formula of classical liberalism is Walter Lippmann's. I have quoted it at the beginning of this Introduction. It consists of two parts. First, "in a free society the state does not administer the affairs of men". To be more precise, the state ought not to administer private men's own affairs. Secondly, the state "administers justice" (i.e., ought to administer justice) "among men who conduct their own affairs". In other words, the state ought to balance the relationship between those private men by enforcing laws impartially. Later we shall see Locke's formulation of the same idea. To anticipate it: the state ought not to take men's "properties" arbitrarily, but it ought to preserve their properties by the impartial execution of equal laws.



As I said, classical liberalism defends "law" and "liberty". The harmonious relationship between "law" and "liberty" can be restated as follows. The state should administer justice, while each individual man should manage his own affairs or his "property". Adam Smith clearly expresses this harmonious relationship between "justice" and "property". I shall quote from his lecture on jurisprudence:

The first and chief design of every system of government is to maintain justice; to prevent the members of a society from incroaching on one anothers property, or seizing what is not their own. The design here is to give each one the secure and peacable [sic] possession of his own property. {The end proposed by justice is the maintaining men in what are called perfect rights.} (LJ, (A), i, 1; emphasis added.)

Smith's use of the word "property" here is reminiscent of Locke's. It means one's own "thing", where a thing includes one's "person" and "reputation" as well as one's possessions. The crucial point is that the state's administration of justice prevents one man from invading another's own affair or domain. "The end of justice", says Smith, is "to secure from injury" (LJ, (B), 6). The state, therefore, ought to prevent mutual injury among those who conduct their own affairs. The administration of justice presupposes the laws which prohibit men from injuring one another. Given the negative concept of justice, it is easy to see that the state's administration of justice helps the economic activities of individual property-owners. Given the negative concept of laws, we can understand why individual liberty is compatible with the enforcement of laws. In short, the so-called "economic liberalism" goes hand in hand with the judicial concept of the state as an impartial justice-dispensing, spectator.<sup>6</sup>

In Hume and Kant, we can also find the peaceful harmony of an individual "liberty" and a universal "law", or of private "property"

and public "justice". This is the chief characteristic of classical liberalism. And this, as we shall see, is the most conspicuous feature of Locke's liberalism. If we are to understand or examine classical liberalism, we must clarify how a theorist sustains this peaceful harmony.

Our clarification will be rewarding if we focus on "property" and "justice" rather than "liberty" and "law". There are a few reasons for this. First, the concept of property is more complex than that of liberty, while the concept of justice is more complex than that of law. Hence, we obtain a richer picture of classical liberalism by treating "property" and "justice" as its two key elements, and clarifying them. Secondly, "property" is of particular significance to classical liberals and 17th-century theoretical ancestors (such as Grotius and Pufendorf). They all paid special attention to the question about the origin of (external) property. They were not satisfied with an abstract discussion of individual liberty. "Property", in their view, is the guarantee as well as the concrete expression of "liberty". Locke in particular attached special significance to his account of the origin of (external) property. (Here the word "external" is used to indicate that the object of one's own is an external, physical object, rather than an "internal" object such as one's life or liberty.)

Thirdly, their concept of justice deserves attention because it is very narrow in comparison with our concept of justice. By "our" concept of justice, I mean the concept which has been frequently discussed in recent years by philosophers and political theorists, i.e., the concept of "distributive" (or "social") justice. Classical liberals such as Locke, Smith, Hume, and Kant hold that the concept of distributive

justice is insignificant. This modern trend started when Grotius ousted the Aristotelian concept of distributive justice from his natural jurisprudence. The classical-liberal concept of justice, though differently named, is that of "corrective" (or "commutative") justice. This is the justice which tries to eliminate injustice (or violence) from the transaction of private right-holders. John Stuart Mill appears to be one of the first theorists who introduced the concept of distributive (or social) justice into liberalism.<sup>7</sup> But whatever the case may be, we tend to confuse our broader concept with the narrow classical-liberal concept of justice. In fact, recent interpretations of Locke suffer from this confusion. We can avoid this confusion if we focus on the classical-liberal concept of justice from the start, and get a very clear picture of classical liberalism.

For these reasons, I shall treat "property" and "justice" as the two central concepts of classical liberalism. In CHAPTER 1, I shall show in detail that Locke's political theory fits into the general picture I have provided above. Locke, if properly understood, is the founder of classical liberalism. He defended "justice" against arbitrary government, and he defended "justice" for the sake of the violence-free, modern economic society where everyone minds his own business or his "property". This picture of Locke as a classical liberal, I believe, is old and authentic. Many academic interpreters in recent years have forgotten, or discarded, this classical-liberal picture of Locke. They have produced most queer interpretations of Locke's political theory.

I shall present, or restore, the classical-liberal picture of Locke in CHAPTER 1. Then I shall attack recent interpretations of Locke's political theory in CHAPTER 2. These two chapters, taken together, establish the authenticity of my understanding of his liberalism.

In CHAPTER 3 and CHAPTER 4, I shall examine Locke's liberalism critically. I shall examine his concept of property first (CHAPTER 3), and then discuss the self-deceptive quality of his liberalism (CHAPTER 4).

## NOTES to INTRODUCTION

1. Quoted from W. Lippmann, The Good Society (2nd ed.; London: George Allen & Unwin, 1943), p. 267.
2. I shall not address any methodological or philosophical question about an "interpretation". The proof of the pudding is in the eating. If there is no such thing as an "objective" interpretation, then I shall simply claim that my interpretation is a defensible one. Unlike many recent interpretations, mine can be defended by what Locke actually said.

I do not have any special, pre-conceived "method" of interpretation. But I should perhaps mention the fact that I began to read Locke's texts as a foreigner. I have had to face the problem of "overcoming" the gap between myself and his texts. This is not a theoretical problem, but a practical problem. So I have solved it by practical means — by reading Locke's texts carefully. The following statement, made by Hans-Georg Gadamer, confirms my view that being a foreigner is an advantage in an interpretive exercise:

The first presupposition which implies the concept of interpretation is the "foreign" character of what is yet to be understood. Indeed, whatever is immediately evident, whatever persuades us by its simple presence, does not call for any interpretation. (Hans-Georg Gadamer. "The Problem of Historical Consciousness", Interpretive Social Science: A Reader, ed. P. Robinson & W. M. Sullivan (Berkeley: University of California Press, 1979), p. 111.)

3. C. H. McIlwain, Constitutionalism: Ancient and Modern (Ithaca, N. Y., 1958), p. 21.
4. For a useful historical survey of the doctrines of early liberals, see F. A. Hayek, New Studies in Philosophy, Politics, Economics and the History of Ideas (London: Routledge & Kegan Paul, 1978).
5. As it is clear from the contents of this dissertation, I do not discuss Locke's theory of toleration (except briefly in Appendix 2). I hold that it is a significant component of his "liberalism". Nevertheless, I shall limit the scope of this dissertation by concentrating on his discourse on property and justice.
6. Hayek rightly points out that the distinction between "political liberalism" and "economic liberalism" (such as the one drawn by Benedetto Croce) is useless for our characterization of liberalism in Britain. See Hayek op. cit., p. 132.

7. The use of the expression "social" justice is of comparatively recent origin. Though the expression is used in more than one sense, it is frequently used as a synonym of "distributive" justice. F. Hayek suggests that J. S. Mill is the first modern liberal theorist who used "social and distributive justice". See his Law, Legislation and Liberty (London: Routledge & Kegan Paul, 1982), vol. 2, p. 63 et passim. Hayek is one of the few theorists who attach great significance to the narrow classical-liberal concept of justice.

## **CHAPTER 1**

### **PROPERTY AND JUSTICE:**

**An Exposition of Two Major Components  
of Locke's Liberalism**

## CHAPTER 1

### PROPERTY AND JUSTICE

#### An Exposition of Two Major Components of Locke's Liberalism

"Aristotle is allowed a master in this science [i.e., the science of politics], and few enter upon the consideration of government, without reading his Politics. Hereunto should be added, true notions of laws in general; and property, the subject-matter about which laws are made. He, that would acquaint himself with the former of these, should thoroughly study the judicious Hooker's first book of Ecclesiastical Polity. And property I have nowhere found more clearly explained, than in a book, intituled, Two Treatises of Government. But not to load your young gentleman with too many books on this subject, which require more meditation than reading; give me leave to recommend to him Puffendorf's little Treatise, De Officio Hominis et Civis." (Quoted from Locke's letter to Richard King, dated 25 Aug. 1703; Works, X, 307f., emphasis added.)

In this chapter I shall offer an exposition of two major components of Locke's liberal political theory. The first component is his theory of property; or more accurately, his account of appropriation in Chap. 5 of the Second Treatise. The second component is his theory of the state — more specifically, his theory of "the Extent of the Legislative Power" in Chap. 11 of the Second Treatise. These two chapters of the Second Treatise are the core of Locke's liberal political theory. I shall give an exposition of each component of Locke's liberal political theory, and explain how his account of appropriation is related to his attempt to limit the supreme power of the state.

Locke's political theory is a fusion of the modern theoretical tradition of "natural rights" and the ancient-medieval tradition of



"constitutionalism". He combines the two traditions in his own way in the Second Treatise. I have quoted above a passage from Locke's letter to Richard King. The passage not only informs us of Locke's opinion of what books we should read for a study of politics. It also indicates the theoretical context in which Locke's political theory can be properly understood. Aristotle and Hooker and two of the patron saints of "constitutionalism", of "a government of laws, not of men". Pufendorf is a modern proponent of "natural rights". Locke hints that he has studied both traditions. He links them by saying that "property" is "the subject-matter about which laws are made". "Property" in this context can mean either a man's natural exclusive right of disposal over his possessions, or his natural exclusive rights in general. (Alternatively, we can say that "property" means the object which is a man's "own", whether it is a material object or not.)

Locke holds that every man has a minimal exclusive domain of his own, by virtue of his natural status or the status God granted to him. This minimal exclusive domain consists of each man's life and "what tends to the Preservation of the Life". It consists of each man's life, "Liberty, Health, Limb", and the minimal "Goods" required for his preservation (ST, 6). The law of nature demands: "no one ought to harm another in his Life, Health, Liberty, or [minimal] Possessions". Nobody ought to "impair" or "take away" or damage these minimal objects of another man (6). In his proposed reform of the Poor Law, Locke stated: "Every one must have meat, drink, clothing, and firing. So much goes out of the stock of the kingdom, whether they work or no" (Bourne, Life, II, 382).

Beyond the minimal sphere of his life, liberty, and few

possessions, there is a larger private sphere which every active human being forms by his own efforts and the efforts of his ancestors. This larger, exclusive domain is called "property". We can call this larger domain an "enlarged property", and the minimal domain the "minimal property". (Locke's actual usage suggests that "property", in the proper sense of the word, is the exclusive domain already enlarged by the efforts of private men.) His account of appropriation in Chap. 5 of the Second Treatise explains how each man can legitimately begin and enlarge his exclusive, material domain in the pre-political world of common resources. In his view, each man can legitimately demarcate his material domain by means of his own labour, his voluntary exchange (including the use of money), and his natural inheritance. Those men who have demarcated their exclusive private domains by their own efforts, and the efforts of their ancestors, unite themselves to protect their domains effectively. This is the origin of a political society. Each man's enlarged domain consists of his life, liberty and the possessions which he has acquired by the natural methods of acquisition (i.e., his labour, voluntary exchange, money and inheritance). Positive laws, according to Locke, are the great instrument by which each man's domain is effectively protected from the invasion of other men.

Locke's theory of "the Extent of the Legislative Power" is an attempt to show the "bounds" within which the holder(s) of the supreme power of the state ought to act. It consists of claims against arbitrary rule (or a government of will), as well as claims for the rule of law (or a government of laws). Locke's central claim is that whoever holds the supreme power of the state, regardless of the form of

government, has an obligation to "administer justice". The administration of justice formally means the impartial administration of laws. But in Locke's view, not every product of a legislature counts as a "law". The "laws" in question are the laws which protect one man's "property" (i.e., his life, liberty and possessions) from the violence and injury of others. Hence, the supreme political agent has an obligation to sustain, by laws, a violence-free relationship among the citizens who have their own private domains. In short, the supreme political agent – the "legislative", or the "magistrate" – has an obligation to "preserve" their "properties" by laws.

This is an outline of the two components of Locke's liberal political theory. Let me sharpen this outline. His liberal political theory nicely fits into Walter Lippmann's formula of classical liberalism: "In a free society the state does not administer the affairs of men. It administers justice among men who conduct their own affairs." (Quoted in my Introduction, p. 2.) According to Locke, every man demarcates – and ought to demarcate – his private domain of rights, independently of the state's administration of justice. By nature, every man is a little sovereign within the domain which he demarcates by his own efforts (and inheritance). On the other hand, the state has a right and power to deal with public affairs, i.e., the affairs of the intersections of privately demarcated rights. Whereas "property" signifies the private realm within which each man minds his own business, "justice" signifies the public adjustment of one man's relation to another man's "property" by means of equal laws. Within Locke's liberal theory of the state, there is peaceful coexistence between private "property" and public "justice". The supreme political agent's proper business is to make

laws and enforce them impartially, for the purpose of preventing and correcting one man's violation of another man's right (or "property"). On the other hand, each man's duty or "office" is to keep his actions within the bounds of the laws. Within the legal bounds, each man has a liberty to dispose of his proper objects (i.e., his life, his liberty or actions, and his possessions) as he thinks fit. The happy harmony between private property and public justice is, at the same time, the harmony between positive liberty and negative laws. We must probe into the way Locke harmonizes "property" with "justice", and "liberty" with "law". To probe into the nature of this harmony is to grasp Locke's liberalism by the root. It is to grasp his liberalism as a fusion of the modern tradition of "natural rights" and the ancient-medieval tradition of "constitutionalism"; namely, as a fusion of radical economic premises and conservative political conclusions.

A majority of recent Locke scholars have failed to clarify the harmonious relationship between "property" and "justice". They have been puzzled and dismayed by the enigmatic, Janus-like feature of Locke's political theory. Without multiplying words, I shall explain the nature of the harmony or fusion, and thereby conclude my outline of Locke's liberal theory of the state. First, let us look at how he fuses men's present possessions with their rights or "property". According to Locke, men have rights over their present possessions because they, and their ancestors, have acquired them by their honest labour (and other legitimate methods). Men's present possessions are, in fact as well as in theory, the result of the legitimate acquisition and legitimate exchange which began in the pre-political past. There were no such things as illegitimate possessions in the pre-political

past; there was not a single robber. If there had been a robber, then men's present possessions would rest on robbery. Then their possessions would have to be redistributed to rectify injustice, i.e., to restore to each man what he should have acquired if there had been no robber. Yet according to Locke, there is no need to rectify the acts of injustice committed in the pre-political past. No such act was committed in the pre-political past. Everybody acted justly! To maintain this position, he uses a mythological notion of the pre-political past, and writes a story of appropriation according to which every pre-political man acquired his goods as he ought to have acquired them. Locke's view goes well beyond the abstractly philosophical position that every man has a right to dispose of external goods, if he has acquired them by his honest labour (and other legitimate methods). Every man has such a right not only if, but because, he has acquired external goods by his honest labour (and other legitimate methods). Men "enter into society with one another", for the purpose of preserving "what honest industry has already acquired" (A Letter concerning Toleration, Works, VI, 42; emphasis added).

Having seen Locke's attempt to fuse men's present possessions with their rights or "property", we can now discuss how he connects men's rights or "property" with "justice". "Justice" deals with men's possessions as well as their lives and liberties. I shall quote a passage which sums up the way Locke establishes harmony between "property" and "justice". The passage is long, but it is worth quoting in full:

The commonwealth seems to me to be a society of men constituted only for the procuring, preserving, and advancing their own civil interests [i.e., property].

Civil interest I call life, liberty, health, and indolency of body; and the possession of outward things, such as money, lands, houses, furniture, and the like.

It is the duty of the civil magistrate, by the impartial execution of equal laws, to secure unto all the people in general, and to every one of his subjects in particular, the just possession of these things belonging to this life. If any one presume to violate the laws of public justice and equity, established for the preservation of these things, his presumption is to be checked by the fear of punishment, consisting in the deprivation or diminution of those civil interests, or goods, which otherwise he might and ought to enjoy. But seeing no man does willingly suffer himself to be punished by the deprivation of any part of his goods, and much less of his liberty or life, therefore is the magistrate armed with the force and strength of all his subjects, in order to the punishment of those that violate any other man's rights. (Quoted from A Letter concerning Toleration, Works, VI, 9f.)

This passage clearly shows that Locke's concept of justice is that of "corrective justice". It presupposes that each man has rights (or property, or civil interests), prior to his dealings or interactions with other men. The administration of justice in the formal sense is "the impartial execution of equal laws", or the treatment of equal cases in equal manners. But its purpose is to protect men's rights from mutual violation. This is what Locke means when he says, "to secure unto all the people in general, and to every one of his subjects in particular, the just possession of these things belonging to this life". The crucial point here is that justice does not "give" a right to any party in any positive sense. Justice "leaves" the existing rights of men intact, unless a dispute of rights arises. Suum cuique tribuere, according to Locke, means: leave everyone's right alone. Every private man, as we have seen, determines his right or the objects of his right. What justice does is to protect the

right each man has against the unjust violence of others, by impartially executing the criminal law which specifies proper measures of punishment and the civil law which specifies proper measures of reparation. Locke's concept of justice, unlike the recent concept of "social justice", is entirely negative and conservative.

The chief characteristic of Locke's political theory is that the negative and conservative notions of law and justice are combined with the strongly economic notions of positive liberty and natural rights. In his view, each man's "right" (or "property") is not opposed to every government; it is opposed only to arbitrary government. The public administration of justice is not opposed to the unequal possessions of men. It is only opposed to an unequal treatment of the rights which men already have (including the rights they have over their unequal possessions). Locke defends any government which rules by laws, provided those laws are designed to preserve the society where each man's life, liberty and possessions are protected against the violence of other men. This society has an economic basis in the labour of men and their voluntary exchange.

In what follows, I shall give a more detailed exposition of Locke's liberal political theory. The outline I have presented above will be fully elaborated in two parts. In PART 1, I shall discuss in detail his account of appropriation of Chap. 5 of the Second Treatise. In PART 2, I shall discuss his theory of the extent of political power, with particular emphasis on his negative concept of justice. My discussion in PART 1 is long. I shall deliberately break down the barrier between the two components of Locke's liberalism, when I come to discuss the purpose of his account of appropriation in PART 1.

## PART 1. Locke's Account of Appropriation

It is easy to provide an exciting interpretation of Locke's account of appropriation. Many commentators have done this in recent years. All we need to do is to make imaginative use of bits and pieces of what Locke says in Chapter 5. It is also easy to criticize what he says. Many critics have done this, too. They have pointed out his obscurity and the absence of any rigorous argument. However, it is very difficult to explain what is going on in Chapter 5 of the Second Treatise. Many commentators and critics have failed to explain it. They have simply produced various interpretations and criticisms. They resemble critics and producers of Hamlet who, after disputing what is going on in the play, happily reduce its contents to make it intelligible for 20th-century readers and audiences. I am not opposed to the creative use we may make of Locke, nor to a critical evaluation of his account of appropriation. Yet to maintain intellectual health, we must distinguish an "exposition" (i.e., an objective interpretation grounded in our respect for what Locke meant to say) from our creative interpretation and critical evaluation. What I attempt to do below is to explain what Locke's Chapter 5 is about, and what it is for. It is an irony of history that Locke stated in 1703 that he had "explained" "property" more "clearly" than anyone else had done before. We in the 20th century remain uncertain of the point of his account. My exposition, I hope, will put an end to all futile interpretive disputes that have plagued a quarter of the English-speaking intellectual world.

If one wishes to give an exposition, rather than an interpretation, of Locke's account of appropriation, then one must answer two basic



questions. First, what problem did Locke try to solve in Chapter 5? Secondly, why did he want to solve that particular problem? I shall offer the following answers. First, Locke tried to solve the problem of the legitimate conversion of the original community of things into the world of property. He tried to show that there is a legitimate manner, or method, by which men were able to convert the God-given world of common things into the world of property. Secondly, he tried to solve this problem in order to limit the supreme power of the state (i.e., the political or legislative power). The legitimate method of conversion which Locke portrayed in Chap. 5 does not owe its legitimacy to any political authority. By showing that there is a pre-political, legitimate method of acquiring property, Locke can argue that men form a political society to seek a legal protection of their property. He can also argue that whoever holds political power ought not to take their property arbitrarily. In short, the purpose of Locke's account of appropriation is to protect men's properties by positive laws against the arbitrary exercise of the supreme power of the state. These are the short answers to the two questions posed above. I shall elaborate these answers below. Apparently, we need to look beyond Locke's Chapter 5 in order to get the second answer. But we can derive the first answer directly from what he says in the beginning of Chapter 5. Let us see how he formulates the problem "Of Property".

#### 1. 1 Locke's Formulation of the Problem in Chap. 5

In Section 25 of Chap. 5, Locke formulates the problem he undertakes to solve. His formulation is not immediately clear to us, though it was clear to well-educated 17th-century readers. To state it simply,

it is the problem about the origin of property. Hobbes discussed the origin of property (or dominion) in various places of De Cive and Leviathan. Grotius discussed it in De Jure Belli ac Pacis, Bk 2, Ch.2. Pufendorf discussed it in De Jure Naturae et Gentium, Bk 4, Ch.4. And Locke discussed it in Chapter 5 of the Second Treatise.

One notable feature of their discussions of the origin of property (or dominion) is that they tried to show how the original "community" of things turned into the world of property. In Hobbes' case, this original community is the state of nature where everything, including everyone's body, is common to every one else. "Before the yoke of Civil Society was undertaken", says Hobbes, "no man had any proper Right; all things were common to all men" (De Cive, XII, 7). This original "community" is not a community in the proper sense of the word. Hobbes himself says: this state is "neither Propriety nor Community; but Uncertainty" (Leviathan, XXIV). Grotius and Pufendorf had different ideas of the original community of things, and they offered different accounts of the legitimate conversion of the original community into the world of property. Locke's account of the origin of property is based on his idea of the original community of things, and it tries to show how the original community was legitimately transformed into the world of property.

The opening paragraph of Ch. 5 deserves careful analysis. I shall quote the whole paragraph, dividing it into four segments:

- (i) "Whether we consider natural Reason, which tells us, that Men, being once born, have a right to their Preservation, and consequently to Meat and Drink, and such other things, as Nature affords for their Subsistence: Or Revelation, which gives us an account of those Grants God made of the World to Adam, and to Noah, and his Sons, 'tis very clear, that God, as King

David says, ... has given the Earth to the Children of Men, given it to Mankind in common.

- (ii) "But this being supposed, it seems to some a very great difficulty, how any one should ever come to have a Property in any thing:
- (iii) "I will not content my self to answer, That if it be difficult to make out Property, upon a supposition, that God gave the Word to Adam and his Posterity in common; it is impossible that any Man, but one universal Monarch, should have any Property, upon a supposition, that God gave the World to Adam, and his Heirs in Succession, exclusive of all the rest of his Posterity.
- (iv) "But I shall endeavour to shew, how Men might come to have a property in several parts of that which God gave to Mankind in common, and that without any express Compact of all the Commoners."

(ST, 25).

Passage (i) says: the existence of the original community of things can be confirmed by "natural reason" and "revelation". This community is the world God gave to mankind "in common" such that every member of the human species had "a right to their Preservation". To clarify Locke's idea of the original community, we must understand his idea of the "common right" of every man. This is a right which each human being had, in the beginning of the world, to take and make use of an indefinite portion of the God-given world. By "common" is meant "just like any other member of the human species". It is the right which everyone had "in common with Adam" (FT, 87), or "in common with others" (ST, 25).

I shall briefly show how Locke derives the common right of everyone, and further clarify the indefinite feature of this right. In the First Treatise, Locke rejects Filmer's claim that God originally gave the world to Adam exclusively, and claims instead that the Bible says God gave the world to mankind in common (FT, 24, 29, 30, 40). In short,

Locke derives "the common right" from biblical evidence. But he elaborates what he finds in the Bible. Since God implanted in every man "a strong Desire of Self-preservation when He made him", "he followed the Will of his Maker" in pursuing "that natural Inclination he had to preserve his Being" (FT, 85). "Therefore", says Locke, every man originally "had a right to make use of those Creatures, which by his Reason or Senses he could discover" (FT, 85) or "a right to a use of the Creatures" (86). This is a common right to make use of lower creatures for self-preservation, and it implies a common right to seize animals and plants for the sake of self-preservation. But the world God gave to mankind includes the earth itself. In Chapter 5 of the Second Treatise, it is assumed that everyone originally had a common right to make use of an indefinite portion of the earth. He speaks of "the common right" with respect to movable natural provisions (ST, 27, 28, 29, 30). And when he discusses the appropriation of land, he speaks of "the right of another" (36) or "his Neighbour's share" (37), meaning that a man's neighbour originally had a right to the seizure and use of an indefinite portion of the external world just like anyone else.

The common right of everyone is a right to take, and make use of, an indefinite portion of the God-given external world. It is a right of free access to an indefinite portion. Since the object of the common right is an indefinite portion of the external world, we can designate Locke's concept of "common right" as "an indefinite right". The expression "an indefinite right" derives from Pufendorf. He referred to the common right of everyone as "an indefinite right" in De Jure Naturae et Gentium (4, 4, 4, et passim). But this expression can be properly used to capture the chief characteristic of Locke's

concept of the common right of everyone. To state this characteristic more precisely, the common right of everyone is not a right to use the definite portion of the external world which a man has already seized or taken, but a right to the seizure and use of an indefinite portion of the external world. It is a right of free access to an unspecified portion of the God-given, external world. Since God originally gave this right for the purpose of the preservation of every man, it is also regarded as "a right to their [men's] Preservation, and consequently to Meat and Drink" (ST, 25).

Let us return to the opening paragraph of Chap. 5 which I have quoted. Sentence (ii) says: given the supposition of the original community of things, "some" find that there is a difficulty explaining "how any one should ever come to have a Property in any thing". To have "a property in" a thing means to have "an exclusive right of disposal over" it. I shall not discuss here what Locke meant by the word "property" in any detail. This question will be fully explored, and examined, in CHAPTER 3. We should only note that if a man has a "property in" X, then it logically implies that nobody else has "a right to" X, or a rightful claim to take or make use of X. In the context of Locke's account of the transformation of the original community into the world of property, this means that if a man "comes to have a property" in an X portion of the world God gave to mankind in common, then everyone else's "common right" must – logically, must – be cancelled with respect to X. Hence, anyone who tries to explain the legitimacy of the transformation of the original community of things into the world of property needs to show that the cancellation of the "common right" of everyone is justified. Locke's strategy, as we shall see

later, is to show that the cancellation of the "common right" involves no injury to other men.

Locke's statement (ii) is not about any specific theorist, nor about any specific difficulty. He wants to make a general point: given the true premise that things were originally common to mankind, "some" find it very difficult to understand, or explain, how each man's exclusive property could arise from the original community. Peter Laslett and other scholars have mistakenly identified "a very great difficulty" with Filmer's objection to Grotius' account of the origin of property. I shall criticize their interpretation later (in CHAPTER 2). Locke is speaking of "a very great difficulty" of "some" indefinitely.

In Passage (iii) Locke mentions Filmer's view as a possible response to the prima facie difficulty, and brushes it aside. Filmer recommended his readers to abandon the very idea of the original community of things, and to embrace his alternative premise instead. In criticizing Grotius in Patriarcha, he stated:

I have briefly presented here the desperate inconveniences which attend upon the doctrine of the natural freedom and community of all things. These and many more absurdities are easily removed if on the contrary we maintain the natural and private dominion of Adam to be the fountain of all government and propriety.

Filmer's alternative premise and his conclusion (i.e., absolute monarchy), according to Locke, are plainly false. So he declares that even "if it be difficult to make out Property", "I will not content my self" to accept Filmer's false alternative.

Finally, we come to the most important part of the opening paragraph of Chap. 5, i.e., Locke's own formulation of the problem of the origin of property. As he puts it, it is the problem of "how" "Men might" "come to have a property" "in several parts of that which God gave to Mankind in common". This is a problem about the method or

manner of appropriation, rather than the problem about why there should be anything like property at all. It is the problem of how men come to have a property in definite portions of the God-given world of common things. "Appropriate" is Locke's favourite word. He uses it in a somewhat flexible way, exploiting certain images associated with it. But what he strictly means by "appropriate" is to set aside a definite portion of the external world as one's "own" or one's property, i.e., to come to have a property in a definite portion of the external world.<sup>2</sup> Locke indicates, from the start, that each man's appropriation or his coming to have a property in a part of the world is independent of "any express Compact of all Commoners" (25). In Sect. 26 of Chap. 5, he states that since God has "given" "all the Fruits ... and Beasts" "for the use of Men", "there must of necessity be a means to appropriate them some way or other before they can be of any use ... to any particular Man" (26). Locke's task in the rest of Chap. 5 is to show what is the specific manner of appropriation (with respect to land as well as fruits, beasts, and water).

Thus Locke's account "Of Property" in Chap. 5 of the Second Treatise is an account of the 'manner of appropriation which is independent of any explicit compact of all commoners. To be perfectly clear about Locke's problem, however, we must ask one important question. Is he trying to explain how men in fact appropriated the God-given world of common things? Or is he presenting the manner in which men ought to appropriate the God-given world of common things? In other words, is Locke providing an account of the de facto mode of appropriation, or an account of the de jure mode of appropriation? Is he presenting a record of facts (i.e., what happened), or an outline of norms (i.e., what ought to happen)? This question would embarrass Locke, and if we

press this question hard we shall soon be able to develop a critique of his account of appropriation. Though we do not need to criticize him at this point, we must clarify what he does in Chap. 5 by answering the either/or question which I have raised. The answer is this. Locke deals with the normative as well as the factual question of appropriation. He blurs the distinction between the factual question about the way men have actually or probably appropriated the world, and the normative question about the way they ought to appropriate the world. He blends the two questions together into a story of appropriation. Within this story, he shows that there is a manner of appropriation which is both legitimate and factual (or probable or practicable).

Since Locke's account of appropriation is a single narrative which unifies the normative and factual question, it is difficult to formulate his "problem" in any precise way. He ambiguously asks, in the opening paragraph, how men "might" come to have a property in definite portions of the world. What is this "might"? This conjectural "might" is a mixture of what has happened and what ought to happen. Analytically speaking, he undertakes either one of the following tasks (a) he presents the legitimate manner of appropriation, and then he claims that men are likely to have adopted this mode of appropriation (or it was practicable for them to do so); or (b) he presents the de facto mode of appropriation first, and then explains why this mode of appropriation is legitimate. Either way, Locke attempts to show that there is a legitimate mode of appropriation which men have actually (or probably) adopted. His account of appropriation attempts to deal with one compound problem within a single narrative: How have men appropriated the originally common world, and why is it legitimate to appropriate it in that particular manner?



It is significant that Locke addresses one compound problem. I have re-formulated his problem on the basis of an analysis of his own obscure formulation of the problem. But if we were pressed to state what Locke's own problem is, then we would have to repeat his non-analytical question, i.e., how men "might" come to have a property in distinct portions of the God-given common world. This unclear formulation of the problem, as I said, is a blend of norms and facts. This suggests that Locke's account of appropriation is a story, or an extended metaphor, or a myth. In fact, the prominent feature of his account is that it is mythical. As it stands, it is neither a factual investigation into the development of property nor a straightforward attempt to justify the specific mode of appropriation which existed at a particular point in time. Locke blends the two, and writes a mythical story or a fairy-tale within which what ought to happen actually happens. We can certainly extract from his story some rudiments of his factual investigation into economic history, or some rudiments of his justificatory arguments for the acquisition of property by labour. Nevertheless, we can only extract them from his story, his extended metaphor, or his myth. To call it a myth is not to dismiss it, nor to criticize it (though we can criticize it if we so choose). I am at the moment trying to explain the prominent feature of Locke's account of appropriation by classifying it as a myth.

Let us look at how Locke blends norms and facts. I shall cite only two examples here. First, it is legitimate, according to him, for a man to appropriate the common world by his labour if "there is enough, and as good left in common for others" (27). This is a normative judgement of Locke's. But this is combined with a prima facie factual claim that "Labour, in the Beginning, gave a Right of Property" (45).

A second example is this. In the beginning of the world, there was a "measure of Property" that each man should appropriate only as much as he can make use of (31, 36). In addition, everyone actually regulated his behaviour by this measure: "This measure did confine every Man's Possession, to a very moderate Proportion" (36). There was no "room for Controversie about the Title, nor for Incroachment on the Right of others"; "Right and conveniency went together"; "what Portion a Man carved to himself, was easily seen; and it was useless as well as dishonest to carve himself too much" (51). This is Locke's version of the Golden Age which Ovid and other Roman poets had portrayed.

In these examples, Locke makes prima facie factual claims. Each man's labour did in fact give rise to a right of property; the measure of property did in fact confine the size of his possessions; and there was no possibility of any controversy about rights. But these claims are factual only in the prima facie sense; they are presented as facts within Locke's story. No historical evidence is produced to show how men actually acquired goods; whether they had anything like a "right"; or whether men in the early ages of the world fought among themselves or lived in peace. Indeed, anyone interested in the history of the concept of a right would find this story amusing. As far as we know, the concept of a right did not have any means of expression until near the end of the middle ages in Hebrew, Greek, Latin, or Arabic. Ancient philosophers like Plato and Aristotle did not have the equivalent of our expression "a right", as distinct from "the right action" and "the right thing to do". Nor did the Romans, according to Maine, possess the concept of a legal right. Or if we turn our eyes to what appears to be a unique and bizzare language such as Japanese, we find

that the word "a right" did not exist until the latter half of the 19th century when modern Western ideas (e.g., J. S. Mill's idea of "liberty") flooded into Japan, and forced its intellectual leaders to devise a linguistic expression for the peculiar entity "a right". If we are to take a sound historical viewpoint, we must affirm that the concept of a right (as distinct from a law, or an objective right) is a modern invention — largely, a 17th-century product made out of jus.<sup>3</sup>

Locke's prima facie factual assertions are, in fact, the statements of what would (or could, or might) have happened if primitive men had shared his normative judgements and had acted according to those judgements. They are the expressions of what, in Locke's normative judgement, ought to have happened. But they are presented, and disguised, as what has actually happened. Locke nowhere says that such and such events ought to have taken place though they did not actually take place. He is not a Rousseau who concentrates on the question of legitimacy by brushing aside facts on the ground of his ignorance, or their irrelevance.<sup>4</sup> Nor is Locke a Hume who, in his conjectural history, tries to explain how a norm (i.e., a new relation of "ought" or "ought not") can arise from a repeated experience of facts (i.e., a "conjunction" of "is" and "is not")<sup>5</sup>. Locke blurs the edge between norms and facts, and narrates a story in the way a believer characteristically apprehends a myth. About the apprehension of a myth, Kolakowski has made a pertinent comment:

The blurring of the distinction between descriptive and normative elements is in fact characteristic of the way in which a myth is apprehended by believers: narration and precept are not distinguished, but are accepted as a single reality. That which the myth commands, or holds up to be worshipped and imitated, is not presented as a separate conclusion but is directly perceived as part of the story. To understand a myth rightly is not only to understand its factual content but to accept the values implied in it.<sup>6</sup>

Kolakowski is commenting on Georg Lukács' Marxism, the Romantic Marxism which tries to overcome the gap between "is" and "ought" by an act of self-commitment and practical affirmation. But his comment aptly describes the way Locke tells his story of appropriation. He tells his story from the viewpoint of a committed believer, the one who believes that property must originate from each man's labour. He does not distinguish between "narration" and "precept"; he accepts them "as a single reality" and invites us to accept them as such.

Of course, there is nothing profound in the way Locke mixes norms with facts. He simply follows an intellectually obscure procedure, though the procedure he adopts may be emotionally satisfying to those who share his beliefs. Locke did not write Chap. 5 of the Second Treatise as a philosopher who tried to examine arguments. Nor did he write it as a social scientist who tried to explain observed events. He wrote it as a believer. Merits and defects of his account of appropriation arise from the fact that he effectively articulated his own beliefs about the origin of property, without trying to defend them rationally. To apply what Hume said about Locke's account of the idea of power, his account of appropriation is "more popular than philosophical" (THN, 157). The beliefs he articulated were also a part of the 17th century's growing beliefs about labour, commerce and property.

Locke described himself as having "explained" "property" "clearly", but from the viewpoint of a non-believer, he expressed his beliefs about property clearly.

I shall make one more comment on Locke's "compound" problem to clarify what he does in Chap.5. I have said that he addresses the question concerning the de jure and de facto manner of converting the original community of things into the world of property. We need to

clarify what is meant by "the world of property" here. Just as Locke mixes what has actually happened with what ought to happen, he mixes (real or idealized) events in the 17th century with (real or idealized) events in the distant past. He blends the past and the present in his story so that they become hardly distinguishable. (See ST, 40-43 in particular). Given this mythical blend, we cannot tell whether Locke's men convert the original community into the 17th-century world of property, or into the world of property which is supposed to have existed in the distant past. The only thing that we can be certain of is that Locke's men convert the original community into the proto-17th-century world — the world which resembles the 17th-century world of property, or contains the rudiments of it.

Locke's account of appropriation is a self-contained discourse which has a definite beginning and a definite end. It portrays how men initially began to have property; how they expanded their property; and how they settled their property by forming political societies in some parts of the world. But it is impossible to date the events which Locke presents in his account. Is he writing about 17th-century appropriation in England and America, or is he discussing the appropriation which took place in the distant past ("the first Ages of the World" (39), and then the age of commercial economy and scarce land)? This question is unanswerable. He says, for instance, that "in the beginning all the World was America" (49). And he refers to "the wild Indian" in the "vast Wilderness of the Earth" (25, 36). But Locke is certainly not talking about the past as it really was. He is presenting a picture of the remote past by making use of an American Indian, and turning him into a Robinson Crusoe who lives in the vast wilderness of America. His account of appropriation is quasi-historical, not historical. The

events he presents in his account cannot be dated because he blends the remote past and the 17th century. Here again we must treat his account as a story, an extended metaphor, or a myth.

The important point, however, is that the world of property which Locke describes at the end of his account resembles the 17th-century world of property in some important respects. It is the world where "Gold and Silver" "may be hoarded up without injury to anyone" (50). It is the world where men enjoy the "disproportionate and unequal Possession of the Earth" (50). And it is the world of growing commercial economy (48). Strictly speaking, Locke cannot maintain that the world of property which legitimately emerges from pre-political appropriation is the 17th-century world of property. Elsewhere in the Second Treatise, he explicitly says that men do not live in the state of nature very long, but "are quickly driven into Society" (127). He also says that most political societies precede our recorded history (101). To be consistent, Locke cannot claim that men stayed in the state of nature until the 17th century. On the other hand, however, he tries to show that something like the 17th-century world of property emerges out of the pre-political process of appropriation (by labour, voluntary exchange, the use of money, and inheritance). He emphasizes that men "enlarge their Possessions of Land" disproportionately by the use of money and the sale of agricultural products (48). This enlargement is legitimate because men have tacitly agreed to use money (50).

Locke's justification of unequal possessions at the end of Chap. 5 is somewhat oblique, and it is a subject of controversy among commentators. But the fact of the matter is simple. The whole of Chap. 5 is intended to show that the proto-17th-century world of property, the world which

contains the rudiments of the 17th-century world, could legitimately arise from the original community of things. One important feature of the distribution of land in the 17th century (and also, in the 20th century) is that some men own disproportionate pieces of land, while others do not own any land. Locke's aim is to defend the possessions which men actually enjoy in the 17th century against the arbitrary power of government, by showing that their possessions have legitimately arisen independently of any existing political authority. Given this aim, and given the fact of unequal possessions, he tries to show in Chap. 5 that men's unequal possessions could legitimately arise before any political society was founded. Locke is not interested in defending the large possessions of the rich against the poor, or defending the small possessions of the poor against the rich. He is rather trying to accommodate the fact of unequal possessions into his liberal theory of the state, without thinking that there is a serious problem about unequal possessions.

I now conclude my account of Locke's formulation of the problem about the origin of property. The problem he tries to solve can be stated as follows: What is the legitimate manner by which men are likely to have converted the original community of things into the proto-17th-century world of property? This compound problem, if it can be called a "problem" at all, blurs the distinction between the factual question and the normative question about appropriation. It also blurs the distinction between the past and the present. Hence, Locke's account of appropriation is a myth within which he expresses his beliefs about the origin of property. But 17th-century readers who lived under arbitrary government can easily draw morals from his story: we have a property in external goods because we work hard, and our ancestors worked hard;

our possessions are exclusively "our own" by nature; hence, no man including a monarch ought to take our possessions arbitrarily.

## 1. 2 Locke's Account of Appropriation: An Analytical Exposition

In this section, I shall provide an analytical exposition of Locke's account of appropriation. I shall treat the framework of his narrative — the beginning, expansion, and settlement of property— as given. My task is to clarify the various claims Locke advances within this framework. It is a task of bringing about the internal clarity of his compound account by analyzing it into its constituent parts. This task is necessary, though not sufficient, for the purpose of grasping the point of a myth.

Locke first shows that every man, in the beginning of the world, could legitimately begin his property by labouring. He speaks of the beginning of property frequently: man "begins the Property" (ST 28); "the beginning of Property" (30); "whoever has imploy'd ... labour .. hath begun a Property" (30); "Labour, in the beginning, gave a Right of Property" (45); "the Property which Labour and Industry began" (45); and "Labour could at first begin a title of Property in the common things of Nature" (51). To say that man begins his property (in the beginning of the world) means, strictly speaking, that he begins to have "a property in" a portion of the God-given world (in the beginning of the world). Locke's locution "a property in", as I said, can be rendered as "an exclusive right of disposal over". According to Locke, the legitimate manner by which every man can begin to have "a property in" a part of the God-given world is labouring, provided his labouring takes place under the condition where no other man would be injured. Since "every Man has a Property in his own Person, and the "Labour



of his Body, and the Work of his Hands ... are properly his", he can legitimately mix his labour with an external good (27). By joining "something that is his own" to the external good through labouring, he "makes it his Property", namely, he begins to have "a property in" it (27). Everyone can convert a part of the common world to his property by this simple method. It is a quasi-chemical method of removing a natural object from the common world, mixing his labour with it, and "joining" or "annexing" "something that is his own" to it. By this simple method, each man can appropriate a piece of land as well as beasts, fruits, fish and water (28-30,32). He can legitimately begin his property "at least where there is enough, and as good left in common for others" (27). This condition is usually known as the "sufficiency" condition among Locke commentators. Macpherson has made it famous by showing how Locke allows men to "transcend" this condition.<sup>7</sup> But to be exact, this is the condition which merely ensures that no other man would be injured. It is not important to Locke whether the "sufficiency" condition comes to be "transcended" in the course of appropriation. What is important is the idea that nobody ought to harm, or injure, another man by appropriating a part of the common world.

The principle that nobody ought to injure another man is the basic principle of any theory of natural law and natural rights. Cicero and Pufendorf, for instance, emphasized the significance of this principle. In De Officiis, Cicero stated: "the first thing that justice requires of us is this; no one should do any hurt to another unless by way of reasonable and just retribution for some injury received from him".<sup>8</sup> Pufendorf similarly emphasized the significance of a man's duty to avoid injury. Of men's "mutual duties",

i.e., one man's duty toward another man, "the first place belongs to this one: let no one injure another" (De Officio Hominis, 1,6,1; also, De Jure Naturae, 3,1,1 ). At the beginning of the Second Treatise, Locke formulates the fundamental precept of the law of nature as follows: "no one ought to harm another in his Life, Health, Liberty or [minimal] Possessions" (6). Unfortunately, Locke nowhere clarifies what he means by "harm" or "injury" in the way Pufendorf or Hobbes does. He uses the notion informally. But in Chap. 5 of the Second Treatise, he does claim that pre-political appropriators were able to avoid injuring another man. By this he roughly means that pre-political appropriators did not restrict another man's freedom seriously by their acts of appropriation.<sup>9</sup>

Let us return to Locke's story of appropriation. The rest of his story about appropriation in the first ages of the world can be summed up as follows. God gave the world to "the use of the Industrious and Rational", and wherever men "fixed" their labour, they could fix their "property" (34). They improved the world by their labour, and took "pains" to cultivate land or to catch beasts (34, 32, 30). God also "Commanded" each man to labour, and the "Condition of Humane Life, which requires Labour and Materials to work on, necessarily introduce[d] private Possessions" (35). Besides the principle of non-injury there is another principle which limited the amount of property men could acquire; everyone should acquire only "as much as [he] can make use of to any advantage of life before it spoils" (31). This use/non-spoilage principle is basically God's prohibition that nobody ought to destroy lower creatures purposelessly (6). A similar principle applies to the possession of land: everyone ought to take good care of his land, in order that its produce will not decay (38).

In the beginning of the world, then, there were two principles by which appropriators had to regulate their actions. But as a matter of fact, every appropriator "was only to look that he used them [i.e., the goods he has appropriated] before they spoiled" (46); he did not have to worry about injuring another man. The reason for this is that every primitive man produced and consumed very little in the state of superabundance God created. Locke states:

No Mans Labour could subdue, or appropriate all: nor could his Enjoyment consume more than a small part; so that it was impossible for any Man, ..., to intrench upon the right of another, or acquire, to himself, a Property, to the Prejudice of his Neighbour (36).

Thus the principle of non-injury cannot possibly be violated, given the primitive economic condition. This makes us wonder why Locke stipulates the principle of non-injury in the form of the "sufficiency" condition. Clearly, he wants to say that the primitive mode of appropriation he describes was not only legitimate but practicable. By this method of persuasion, he leads his readers to believe that the events he describes in his story actually took place.

Finally, Locke makes one negative claim about the origin of property. He claims that property did not arise from any express compact of all commoners. He offers two reasons for this negative claim: First, if "such a consent as that was necessary Man had starved, notwithstanding the Plenty God had given him" (28). Secondly, such a consent would have caused great inconvenience: "Children or Servants could not cut the Meat which their Father or Master had provided for them in common" (29). The first reason is primary. Locke's view is that since man's starvation, which would be inevitably caused by universal consent, is contrary to the will and grant of God,

universal consent cannot be the legitimate method of beginning property. After providing a positive account of the beginning of property and rejecting what he takes to be the false alternative, Locke concludes his account of the beginning of property:

We see how labour could make Men distinct titles to several parcels of it, for their private uses; wherein there could be no doubt of Right, no room for quarrel (39).

Locke's account of appropriation in Ch. 5 has two additional phases: the expansion of property, and the settlement of property. The expansion of property may be understood in the aggregate sense of the development of the state of affairs where men have a property in external goods; or in the individual sense of the expansion of each man's property. Locke explains the aggregate expansion of landed property by reference to the "value" enhanced by labour. To put it simply, private ownership of land develops, because privately improved land yields valuable crops, owing to the labour expended on that land. In Locke's own words: it is not "strange" that "the Property of labour should be able to over-ballance the Community of Land", because "'tis Labour indeed that puts the difference of value on every thing" (40). If we compare "an Acre of Land planted with Tobacco, or Sugar, sown with Wheat or Barley" with "an Acre of the same Land lying in common, without any Husbandry upon it", then the former obviously has more cash value. Where does the difference come from? Locke's answer is that "the improvement of labour makes the far greater part of the value" (40). According to his "very modest Computation", "9/10 or even "99/100" of "the Products of the Earth useful to the Life of Man" are the "effects of labour". Only a negligible portion of their value is derived from "Nature" (40).

Locke's claims about the "value" of land and its produce in sects. 40 - 43 of the Second Treatise have misled many commentators. They have been misled to believe that he has something called "a labour theory of value", or that he defends the claim that everyone has a property in external goods because he greatly enhances their value by their labour.<sup>10</sup> We shall not let their interpretations change the import of Locke's simple story. He is addressing the question why privately-owned land has developed and has been able to surpass (or "over-balance") the land left in common. His answer, as we have seen, is that land yields economically valuable products, only if it has been improved and cultivated by human labour. To quote one more sentence, "Labour ... puts the greatest part of Value upon Land, ... 'tis to that we owe the greatest part of all its useful Products" (43). Some of us may wonder how this can be an answer to the question posed. Locke, of course, makes two assumptions here. First, he assumes the validity of his early claim, i.e., the claim that each man can legitimately appropriate a part of the common land by mixing his labour with that part (provided that he takes good care of it and does not spoil its produce). Secondly, he assumes that men are motivated to produce cash crops by appropriating distinct portions of the common land. Given their economic motivation, they are likely to convert "the community of land" into "the property of labour". They are likely to enclose "an Acre of Land", produce "Twenty Bushels of Wheat", and sell the wheat to the rest of mankind so that the whole of mankind will also receive a "Benefit" (43). Locke does not go as far as to claim that private ownership of land develops because its agricultural products bring cash to its owners, and those owners want to be rich. He makes a slightly more decent claim that each private appropriator of land

can benefit himself as much as he can benefit the rest of mankind (by a commercial exchange).

Locke's claims about "value", "labour", and "property" in sects. 40-43 are causal claims rather than justificatory claims. He tries to explain how "the community of land" diminishes, and how "the property of labour" increases to "over-ballance" the former. He specifically refers to the 17th-century English situation in sects. 40-43. "The Community of Land" (40) is the common land in England which was growing small as a result of appropriation. This "community of land" is presumably the left-over from the land which God originally gave to mankind in common. It is significant that Locke does not hesitate to insert a few paragraphs about the 17th-century English situation, immediately after he has completed his account of appropriation in the beginning of the world (39). He casually inserts sects. 40-43 into his story of the pre-political state of property, by writing one sentence ("Nor is it so strange, ..., the Property of labour should be able to over-ballance the Community of Land" (40)). This clearly shows that it is not important for Locke to distinguish the development of appropriation in a specific 17th-century political society from the development of appropriation in the pre-political state of nature (which succeeds the first ages of the world). Locke's obscure blend of the past and the present, and the political and the pre-political, finds its clearest expression in sects. 40-43.

Elsewhere in Chap. 5, Locke adds that the progressive appropriation of land by "labour" "does not lessen but increase the common stock of mankind" (37), assuming that an export of agricultural products spreads the benefits of private appropriation to the rest of mankind. This, we can say, is a justificatory claim for the expansion

of property in the aggregate sense.

What about the individual expansion of property? Each man, according to Locke, can legitimately expand his property by labouring, exchanging goods voluntarily, and using money. The "expansion of property", in fact, is my expression. Locke prefers to speak of "enlarging" one's "possessions" (46, 48, 49). In Chap. 5 he hardly distinguishes "possessions" in the sense of the material goods which a man enjoys as a matter of fact, from "property" in the sense of the material goods which a man has an exclusive right of disposal. Within his informal story, all subtle distinctions, especially the distinction between facts and rights, collapse. He largely transforms the supposedly juridical category of property into an economic category of material possessions. This transformation is conspicuous when Locke deals with the expansion of a man's "property", or the enlargement of his possessions.

The expansion of a man's property, in Locke's view, was chiefly caused by the use of money. This expansion happened at the time when commercial economy took over the primitive economy of hunters and gatherers. At this stage of economic development, each man could legitimately expand his goods as long as "nothing perished uselessly[sic] in his hands" (46). By bartering the easily perishable plumb which a man gathered for the nuts which would last for a year, he "did no injury; he wasted not the common Stock; destroyed no part of the portion of Goods that belonged to others, so long as nothing perished uselessly in his hands" (46). Similarly, if he exchanged his nuts for the more durable goods such as "a piece of Metal", or "a Diamond", and kept them all his life, he did not invade the right of others; he could "heap up as much of these durable things as he pleased" (46). For

"the exceeding of the bounds of his just Property [does] not [lie] in the largeness of his Possession, but the perishing of any thing uselesly [sic ] in it" (46).

Each man, in the beginning of the world, had a property in the "things really useful to the Life of Man", the things which "are generally things of short duration" (46). But there are other things which men used at the stage of commercial development. "Fancy or Agreement ... put the Value on" them "more then real Use, and the necessary Support of Life" (46). Gold, silver, and diamonds belong to this category of things, and by putting the imaginary value on gold and silver men "tacitly agree[d] in the use of Money" (50). By giving tacit consent to the use of money, however, men also agreed to accept the consequence of the use of money: namely, the "disproportionate and unequal Possession of the Earth" and each man's possession of land beyond the limit of his actual use of its products. Locke states:

[I]t is plain, Men have agreed to disproportionate and unequal Possession of the Earth, they having by a tacit and voluntary consent found out a way, how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus, Gold and Silver, which may be hoarded up without injury to any one (50).

Locke's account of the unequal distribution of land in the pre-political state is causal as well as justificatory. First, men tacitly agreed to use money; hence, they legitimized the use of money. Secondly, they enlarged their possessions by means of money. I shall elaborate the two sides of his account, bu taking up the causal claim first.

As "different degrees of Industry were apt to give Men Possessions in different Proportions, so this Invention of Money gave them the opportunity to continue and enlarge them" (48). What kind of



"opportunity" is this? Locke's answer, in short, is this: money gave men the opportunity to engage in commerce, i.e., buying and selling. Once this opportunity was given, some men appropriated more land to produce more on their land, and to exchange their surplus for money (gold and silver). Locke says:

Where there is not something both lasting and scarce, and so valuable to be hoarded up, there Men will not be apt to enlarge their Possessions of Land ... What would a Man value Ten Thousand, or a Hundred Thousand Acres of excellent Land, ready cultivated, and well stocked too with Cattle, in the middle of the in-land Parts of America, where he had no hopes of Commerce with other Parts of the World, to draw Money to him by the Sale of the Product? It would not be worth the inclosing, and we should see him give up again to the wild Common of Nature (48).

To understand Locke's view of the relationship between the appropriation of land and commerce, we must remember that the world he describes in the above passage is the prototype of the 17th-century English world where commercial agriculture and manufacturing thrived within the unit of privately-owned land. His observation of 17th-century English economy is relevant here. In Some Considerations, he describes what goes on in some parts of England where "thriving manufactures have erected themselves":

[T]he land thereabout being already possessed by ... industrious and thriving men, they have neither need, nor will, to sell [their land]. In such places of manufacture, the riches of the one not arising from the squandering and waste of another, (as it doth in other places, where men live lazily upon the product of the land) the industry of the people, bringing in increase of wealth from remote parts, makes plenty of money there, without the impoverishing of their neighbours. (Works, V, 39.)

Given this model of "industrious and thriving men", it is not surprising that Locke says that men in his pre-political world enlarged their landed property by engaging in commerce. To put it another way, Locke

is alluding to those "industrious and thriving men" of 17th-century England, when he says that pre-political men "found out a way, how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus, Gold and Silver" (ST, 50).

Let us look at the justificatory side of Locke's account of the unequal possessions of men. He lays down the following sequence of events. First, each man acquired a small portion of land by his honest labour for his use (and his family). Secondly, men tacitly agreed to use money as the measure of commerce. Thirdly, they engaged in a free competition to raise the sale of their products. Fourthly, some men with entrepreneurial spirits expanded their landed property and raised the sale of their products in order to accumulate money (gold and silver). Other lazy loafers did not try to expand their land for the purpose of commerce. The consequence of these events is the unequal possessions of the earth among men. But since they have agreed to use money, they have also agreed to its consequence: The process leading up to the unequal possessions is "fair", and no robbery is committed in this process.

Some might object that the accumulation of money (gold and silver) in this sequence of events "injured" other men. Locke anticipates this objection, and says that it did not injure other men since gold and silver are the "metalls not spoilleing or decaying in the hands of the possessor" (50). If a man kept "a sparkling Pebble or a Diamond" "all his Life", he "invaded not the Right of others". He could legitimately "heap up as much of these durable things as he pleased" because these durable things did not perish uselessly in his hands (46). This part of Locke's story is very loose, and we cannot make it intelligible

unless we first detect his confusion. Since Macpherson has recently complicated this part of Locke's story, our situation is doubly complicated. Here I shall show how Locke himself complicated his story. He confusedly associates "injury" with the physical durability, or non-perishability, of things. He mistakenly thinks that if a man possesses durable goods, then for some mysterious reason he can possess a large quantity of them without injuring other men. This is sheer confusion on Locke's part. As we have seen, he states that whether a man exceeds "the bounds of his just Property" or not depends on "the perishing of any thing uselessly [sic]" in his hands. By stating this principle, Locke conflates two entirely distinct ideas, the idea of injury-free exchange and the idea of physical durability. Let us recall his remark on the possession of a large quantity of "nuts". The man who acquired a large quantity of nuts by a fair exchange "did no injury; he wasted not the common Stock" or goods (46). Locke, therefore, should say that no injury was committed in this act of exchange, and no part of the common stock of privately-owned goods was wasted. But he immediately twists this idea by making an additional point that nobody was injured "so long as nothing perished uselessly in his hands" (46). Yet whether a good is physically perishable or durable is irrelevant to the idea of injuring (or not injuring) another man. I have noted that "injury", in Locke's flexible and informal sense, is a serious restriction on the freedom of others. If we use "injury" in this sense, it is plain that a man can injure other men by "hoarding up" money. He can injure others, for instance, by monopolizing gold and silver though gold and silver would not perish in the hands of the monopolizer in the physical sense of "perish".

As a mercantilist economist, Locke himself argued against a monopoly of money supply in 17th-century England: if "bankers and scriveners, and other such expert brokers" gain a monopoly over the supply of money, then the rate of interest should be legally regulated to prevent the "extortion and oppression" by monopolists (Some Considerations, Works, V, 64; also, 5 & 8). In Chap. 5 of the Second Treatise, Locke does not discuss any monopoly situation. But my point is that if a monopoly injures other men, then a man's act of "hoarding" money can injure them in spite of its physical durability. We cannot clarify the idea of "injury" by examining the physical property of an object (whether it can be easily damaged or not), just as we cannot clarify the concept of "property" by examining the physical property of an object. "Injury" is a matter of one man's relation to another, though it may also involve physical objects. Locke should have specified the cases where money "perishes uselessly" in a non-physical sense.

What Locke says about the relationship of "hoarding" and "injury" is entirely unsatisfactory. But as far as his story goes, nobody in the commercial stage of the state of nature was able to accumulate gold and silver to the extent that he could cause injury to other men (in the sense of restricting their freedom seriously). Though Locke says that each man "might heap up as much of these durable things as he pleased" (46), this has little to do with his supposed defence of the unlimited accumulation of gold and silver. There is even a humorous tone in the way he speaks about "heaping up" or "hoarding" gold and silver. The main point he wants to make is that men legitimately expanded their landed property by using the legitimate means of commerce. In making this main point, he also used the irrelevant and false notion that non-perishable goods cannot injure other men.

We now come to the very end of Locke's story of appropriation: the settlement of property. Toward the end of Chap. 5, he adds remarks to show how men settled their properties. Territorial boundaries were settled between communities, or states, or kingdoms by "positive agreement". Within each community, individual men settled their properties by means of positive laws. Since men form a community (or a society) by a compact, we can say that their properties were "settled" by that original compact. Locke himself states:

several Communities settled the Bounds of their distinct Territories, and by Laws within themselves, regulated the Properties of the private Men of their Society, and so by Compact and Agreement, settled the Property which Labour and Industry began (45).

Once men form a society or a community, and set up government, "the Laws regulate the right of property, and the possession of land is determined by positive constitutions" (50). Thus to settle men's properties legitimately means to form a political society which regulates their properties by positive laws.

This is the end of Locke's account of appropriation. We have seen how he accounts for the beginning, expansion, and settlement of property; and how he solves the compound problem of men's de jure and de facto mode of converting the original community into the proto-17th-century world of property. I should like to conclude my exposition of Locke's account of appropriation by adding two considerations.

First, I should like to note that though Locke does not mention "inheritance" in his account of appropriation, every child of a family has a natural right to inherit a portion of his father's (or his

parents') possessions (FT, 88-91, 93; ST, 190). This is not a child's right to inherit the whole of his father's (or his parents') possessions, but a child's right to (at least) a portion of them. Locke's point about the natural right of inheritance is that all children of a family have "a Title, to share in the Property of their Parents [or their father], and a Right to Inherit their Possessions" (FT, 88). This right is based on every child's "Right to be nourish'd and maintained by their Parents" (89). The natural right of inheritance is worth mentioning here for two reasons. First, Locke apparently does not encourage men to rely on their inherited possessions. He encourages men to appropriate land and other goods from scratch. Presumably, he also expects each child to be an independent appropriator who does not rely on his inherited possessions. This view is consistent with the fact that Locke's natural right of inheritance only guarantees the subsistence of every child. Secondly, however, appropriators who expand their possessions have certainly inherited their possessions in the first place. Locke takes this for granted, and does not even mention it in Chap. 5. "Justice", he says, "gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him" (FT, 42, emphasis added). Locke also wrote: "men thriving and getting money, by their industry" are "willing to leave their estates to their children in land, as the surest and most lasting provision" (Some Considerations, Works, V, 39). Thus his account of appropriation is consistent with the natural right to inherit the large possessions of ancestors.

Secondly, I should like to clarify what appears to be Locke's ambiguous claim that "in Governments the Laws regulate the right of property, and possession of land is determined by positive constitutions" (ST, 51). I have quoted this claim without explanation. But recent

commentators have interpreted it in divergent ways, and Locke's meaning is not immediately clear.<sup>11</sup> I shall try to clarify what he means in some detail. Locke means the following: the legislative agent of a political society has a power to make laws, in order to coordinate the manners by which one member of that political society can transfer his property to another member without doing violence to the unity or the well-being of the whole society. The "regulation" of property (3, 45, 50, 120, 129, 139) does not mean a legislator's power to redistribute property according to his will (or according to the will of the majority of the people). It means a legislator's power to establish the violence-free, regular modes of transfer which are beneficial to individual property-owners and the whole society. Such regulation or coordination is required for "the preservation of himself [i.e., each member of the society] and the rest of that Society" (129), or "the good of the Society" (131). In the 1667 draft essay on toleration, Locke says: "the magistrate, having a power of transferring properties from one man to another, may establish any [mode of transfer, provided that] they be universal, equal and without violence, and suited to the interest and welfare of that society" (Bourne, Life, I, 183). In other words, the magistrate's power to "regulate" "property" is the power to prevent the collisions of the actions of property-owners, and to sustain the unity and well-being of the whole society.

Three of his references to the "regulation" of property in the Second Treatise indicate that Locke is concerned about the territorial integrity of a commonwealth, or a political society (45, 50, 120). In 17th-century England, land was an exchangeable commodity, and foreigners purchased land, (See Some Considerations, Works, V, 63, for Locke's

discussion of the price of land and foreigners' purchase of land.) An unrestricted commercial exchange of land would create enclaves in the territory of a political society. Besides this concern with the territorial integrity, however, Locke has a more general concern when he speaks of the "regulation" of property. His general concern is with the smooth functioning of a commercial society. Locke has no intention to argue that the legislative agent of a political society ought to restrict the voluntary exchange of property owners according to a deliberate plan. The "regulation" of the transfer of property does involve a certain amount of coercion, but this coercion should be minimal. This point is important because it shows that Locke's talk about the "regulation" of property is essentially the regulation for the sake of the smooth function of a commercial society of property owners. He has an economic argument that given men's economic motive, the contrivance of a law is generally ineffective to control their voluntary exchange of goods: "it is impossible [i.e., ineffective or impractical] to make a law, that shall hinder a man from giving away his money or estate to whom he pleases" (Some Considerations, Works, V, 5). He also has an argument from the negative character of a law, or the negative concept of justice: The legislator "cannot in justice prescribe me rules of preserving my health" or "cannot compel me to buy a house" (1667 essay on toleration, Bourne, Life, I, 177). "No man can be forced to be rich or healthful, whether he will or no", by "an express law" of the magistrate (A Letter concerning Toleration, Works, VI, 23). In PART 2 of this chapter, I shall discuss Locke's negative concept of justice. Here it is sufficient to note that the "regulation" of property is designed to facilitate the economic function of the society of property-owners.



In the Second Treatise, Locke indicates that the laws which "regulate" the transfer of property are the laws concerning "Inheritance, Purchase" (120), or "Donation, Sale" (121). These laws lay down the general conditions under which the transfer of property should take place among the members of a given political society. These laws, of course, presuppose that the members already have property. Hence, Locke's remark that the "possession of land" is "determined" by "positive constitutions" must be understood in the following sense: the general conditions for the transfer of land are laid down in positive laws. Locke's choice of the word "determine" is unfortunate, because it suggests that positive laws determine what goods (or what pieces of land) men should own. This is not his idea. The ownership of land is not to be determined (or changed) by positive laws. What is determined is the conflict-free mode of transfer beneficial to all members of a particular society. It would be ludicrous if Locke had maintained that positive laws can create a new pattern of ownership, regardless of the pre-existing natural modes of appropriation. Locke is not a fool who willingly loses the fruit of his intellectual labour. He would refuse to "spoil" the product of his intellectual "endeavour" — his "endeavour" to show how men might come to have a property in distinct portions of the pre-political world.

I have discussed the "regulation" of property at length, because Locke's cursory treatment of it has caused interpretive disputes among commentators. Some commentators have transformed Locke into the fool I have mentioned above, or they have assumed that he was a fool.<sup>12</sup> But the state, as a regulator of the transfer

of property, resembles a traffic controller. A traffic controller does not have a right to take away the automobiles which private men already own and drive, yet he has a right to "regulate" the traffic for the benefit of all automobile owners and drivers. The traffic controller, in principle, should give maximum freedom to those who own and drive automobiles. The private owners of automobiles have a right to decide where to go, whereas the controller has a right to regulate the movement of men and their automobiles with a minimal degree of coercion. He regulates the free traffic of men and goods by eliminating collisions, accidents, and quarrels. This is Locke's view of the state in a nutshell. It is precisely because the "regulation" of (the voluntary transfer of) property is minimal that the "regulation" is compatible with the "preservation" of property. At the very beginning of the Second Treatise, Locke states the following: "Political Power" is "a Right of making Laws" "for the Regulating and Preserving of Property" (3; emphasis added).

### 1. 3 Locke's Purpose; or the Point of his Account of Appropriation

My detailed, analytical exposition of Locke's account of appropriation has shown what is in his account, or what it is about. But we have yet to grasp what it is for. Why did Locke write the famous Chap. 5? More specifically, why did he try to solve the compound problem about the conversion of the original community into the proto-17th-century world of property? To answer this question, we must go beyond what Locke says in Chap. 5. I suggested earlier (at the outset of PART 1) that Locke's purpose was to protect men's properties by positive laws against the arbitrary

exercise of the supreme power of the state. This is the short answer I have given to the question why he wrote his account of appropriation. In what follows, I shall defend and elaborate this short answer.

Some might think that this answer is so obvious that it hardly requires a defence. Yet many scholars and philosophers do not take this answer to be true. They are, in my view, what Locke calls "Quarrelsome and Contentious" people (ST, 34). There is, in fact, "little room for Quarrels or Contentions" about the point of Locke's account of appropriation. But we must labour to grasp the mythical features of his account. Then we can apply the proper method of understanding a myth which Lévi-Strauss has recently advocated. We cannot understand a myth, he says, by reading it "from left to right" "as we read a novel or a newspaper article". We must read a myth as if we would read "an orchestral score", i.e., by reading it "as a totality". We must be aware that "something which was written on the first stave at the top of the page acquires meaning only if one considers that it is part and parcel of what is written below on the second stave". In short, we must read a myth not only from left to right, but "vertically, from top to bottom".<sup>13</sup> This is a valuable technique we can use to understand the point of Locke's account of appropriation. Since it is written in English, I shall not try to read it from top to bottom (in the literal sense of "top to bottom", as when we read Japanese or Chinese). But I shall, and we must, read Locke's account backward as well as forward. The point of his account of the beginning of property becomes clear only if we read his account of the expansion of property; the point of his account of the expansion of property becomes clear only if we read his account

of the settlement of property; and the whole point of Chap. 5 becomes clear only if we read the rest of the Second Treatise.

I shall clarify the point of Locke's account of appropriation by moving back and forth within a large, hermeneutic circle. I shall move (1) from the Second Treatise to the broader, 17th-century context; (2) from Chap. 5 toward the end of the book; (3) from the end of the book back to Chap. 5; and (4) within Chap. 5. These movements are designed to clarify (1) the point of the natural right of property, and natural rights in general; (2) the use Locke makes of his account of appropriation; (3) the claim he needs to establish within Chap. 5, and his oblique method of establishing it; and (4) the possibility of the "internal" apprehension of his myth of appropriation. The whole hermeneutic circle will establish, and elaborate, my claim that Locke wrote his account of appropriation in order to defend men's properties against the arbitrary power of the state.

(1) We can lose sight of the point of Locke's account of appropriation because it is a self-contained account. We can also lose sight of the point of the Second Treatise, because each of its chapters deals with a distinct and separate problem.<sup>14</sup> Leaving aside subtle exegetical problems, we must grasp the fundamental point of the 17th-century discourse on property. Locke, as well as other 17th-century theorists, tried to determine the normative relationship between the supreme power of the state and the possessions of private citizens. Locke is not at all interested in the property of an "Indian". He wrote his account of appropriation as a device. It is a device, or a weapon, against those who have the supreme power of the state.

If Locke had merely wanted to argue that one man's possessions

must be effectively protected against his fellow-citizens, then he would not have had to show that men legitimately acquired their possessions in the state of nature. Hobbes claimed that every citizen has a right over his possessions which excludes his fellow-citizens. But at the same time he maintained that an absolute sovereign (one man or an assembly) has a right to take any citizen's possessions arbitrarily. For Hobbes, each man's "property" is created by a sovereign arbitrarily, and it is protected by the absolute power of a sovereign against the invasion of his fellow-citizens. In Hobbes' commonwealth, each man's "property" is not at all protected against the will and power of the sovereign himself. (See Leviathan, XXIV, pp. 296f.; De Cive, XII, 7, et passim.) The point of showing the pre-political origin of property, in the context of 17th-century political theories, is to limit the arbitrary power of the state. Hobbes knew very well the doctrine of the proponents of the "natural" right of property. In De Cive, he labelled their doctrine "the seventh Doctrine opposite to Government". This is the doctrine that each citizen has "such a propriety as excludes not only the right of all the rest of his fellow subjects to the same goods, but also of the Magistrate himself" (De Cive, XII, 7). Hobbes illustrates this doctrine:

we are equall (say they) by nature; there is no reason why any man should by better Right take my goods from me, then I his from him; we know that mony [sic] sometimes is needfull for the defence and maintenance of the publique; but let them, who require it, shew us the present necessity, and they shall willingly receive it (De Cive, XII, 7).

Hobbes' illustration of his opponents' doctrine refers to the issue of taxation. But the crucial point is that the "natural" right of property can shift the burden of justification, in any matter

concerning property, to those who have the supreme power. If we have the "natural" right of property, then we can "let them" justify the way they handle our property. From Hobbes' viewpoint, this doctrine is false. He poses a challenge to his opponents: "Tell me ... how gottest thou this propriety but from the Magistrate? ... thy Dominion ... and Propriety, is just so much as he will, and shall last so long as he pleases". It is the same with "a Family" where "each Son hath such proper goods, and so long lasting, as seeme [sic.] good to the Father" (De Cive, XII, 7). Those who say "let them, who require it, shew us the present necessity, and they shall willingly receive it" do not know that their properties are "already done from the beginning in the very constitution of Government" (ibid.).

Hobbes' comment on the seventh doctrine against (absolute) government highlights the point of the natural or pre-political origin of property. As I said, the point is to limit the arbitrary power of the state. Though Locke did not write Chap. 5 of the Second Treatise to refute the specific claim Hobbes made in De Cive, we can illustrate the point of Chap. 5 by referring to Hobbes' comment on the seventh doctrine. Hobbes holds that the magistrate, or the sovereign, creates men's properties arbitrarily. On this ground, he claims that each man has a right of property which excludes other fellow-citizens, while the magistrate himself can do anything with the citizens' properties. Locke's account of appropriation, on the other hand, meets the kind of challenge which Hobbes posed, i.e., "how thy gottest this propriety but from the magistrate"? Locke shows how "Men might come to have a property in several parts of that which God to mankind in common", before political societies were founded.

Then he uses his account of pre-political appropriation to limit the arbitrary power of the supreme, legislative agent of a commonwealth.

We shall shortly see how Locke uses his account of appropriation to establish claims against the arbitrary power of the state. But to facilitate the task, I shall remove one obstacle. The point of the 17th-century discourse on natural rights has been misunderstood, or misrepresented, by popular writers. Two misunderstandings, or misrepresentations, must be removed if we are to explore the relationship between Locke's account of appropriation and his claims against the arbitrary power of the state. First, natural rights are not inalienable, according to Locke and other 17th-century theorists of natural rights. Jefferson, Adams et al. gave an ill-chosen, popular, and confused expression to natural rights in the American Declaration of Independence: "unalienable rights" (or "inherent and inalienable" rights).<sup>15</sup> Commentators on Locke often fall victim to a loose association of ideas, and try to understand his concept of "natural rights" as "inalienable rights" of one kind or another.<sup>16</sup> But the inalienability of rights is not an essential feature of Locke's concept of natural rights. Locke himself casually speaks of each man as "giving up" his natural right (or his natural power), and "divesting" himself of natural liberty. Every man in the state of nature, he says, has a right (or a power) to punish criminals. He "wholly gives up" "the Power of punishing" when he agrees with other men to form a society (ST, 130, 128). Every man also has a natural power to dispose of his person and his goods as he thinks fit, within the bounds of the law of nature. But when he enters into a society, he partially "gives up" this power "to be regulated by Laws made by the Society, so far forth as the preservation of himself, and the rest of that Society shall require"(129).

(Here as well as elsewhere, Locke takes a natural right to be a species of power.<sup>17</sup>) These quotations make it apparent that it is wrongheaded to treat Locke's concept of natural rights as "inalienable" (or "unalienable") rights.

Secondly, there is another misrepresentation of the concept of "natural rights" which is due to Bentham, and his positivist followers such as Margaret Macdonald. They criticized the concept of natural rights by reading the French Declaration of the Rights of Man and of Citizens, and other historical documents. But they criticized it without studying 17th-century theoretical writings. Consequently, they propagated the false view that a discourse on natural rights is a roundabout way of saying that there ought to be certain rights, though those rights actually do not exist.<sup>18</sup> Those positivists were not at all interested in understanding the past; they wanted to be polemical. Bentham represented proponents of natural rights as conflating the existence of rights and the reason or wish for having rights, and represented them as committing "anarchical fallacies". This representation may have something to do with certain 18th-century Frenchmen. But his remarks are largely irrelevant to 17th-century theorists of natural rights. It is certainly false to say that when Locke and others claimed that every man has natural rights, they simply meant that every man ought to have those rights though nobody actually has those rights.

Despite a certain amount of obscurity which surrounds the 17th-century discourse on natural rights, there is one point which is clear. Claims about natural rights are not claims about the inalienability of rights; nor about anarchy; nor about the ideal existence of rights. They are about the limits of the arbitrary power



of another agent. The point of 17th-century "natural rights" is to make another agent's power dependent on the agreement, or consent, or permission of each man. "Another agent" here includes the state, or a member of those who hold the supreme power of the state. To say that a man has a natural right over X generally means two things for 17th-century theorists. (I am simplifying the 17th-century discourse a great deal at this point. There are different kinds of natural rights, perfect and imperfect, exclusive and common, etc.) First, it means that each man can do what he wills with X without obtaining permission from another man. With the exception of Hobbes, theorists put constraints on what each man is allowed to do. Locke says: each man can do what he wills with himself and his possessions "within the bounds of the Law of Nature" (ST, 4). But both Locke and Hobbes agree that each man can do what he decides to do "without asking leave, or depending upon the Will of any other Man" (4). Hence, claims about a man's natural right are claims against the subordination of the will of one man to the will of another. Secondly, if a man has a natural right over X, then no other man can legitimately have, or use, or take X without his prior consent or agreement. In other words, a man can transfer his natural right only if he agrees to do so. The holder (or owner) of a natural right is a master, whereas other men are servants who must ask if they can have, or use, or take his natural right (or the objects of his right). Any agent (including the state) who wishes to have, or use, or take, the objects of my natural right must present the evidence that I have given him the agreement or permission that he may have, or use, or take them. Here again the point of natural rights is to establish claims against the subordination of the will of one man to the will of another.

It is clear from the foregoing exposition that the point of natural rights can be best captured if we use the owner of property as a paradigm of the holder of natural rights. This is why Locke prefers to use the word "property" to signify natural rights in general. This also explains why Grotius identified "a right" in the proper and strict sense (i.e., "a faculty") with what civilians used to call suum or one's own (De Jure Belli, 1, 1, 5). In Hobbes' case, a natural "right" to all things (including another man's body) is not a right in any proper sense of the word. It is hardly distinguishable from the absence of a right. This is why he can defend the absolute and arbitrary power of a sovereign. Hobbes' theory of natural "rights" makes it difficult for us to understand the point of the 17th-century discourse on natural rights. If we look at Hobbes alone, we cannot say that the point of natural rights is to limit the arbitrary power of another agent. Hobbes' "right" is almost an arbitrary power; and he does defend the arbitrary power of a sovereign. Nevertheless, even his theory of natural "rights" is potentially subversive to those who wish to exercise power arbitrarily. This is what Robert Filmer clearly detected in Hobbes' writings. In his "Observations on Mr. Hobbes's Leviathan", Filmer praised Hobbes for reaching right conclusions, and complained about his "foundations". Filmer said: "I consent with him about the rights of exercising government, but I cannot agree to his means of acquiring it". When Filmer discussed Hobbes' doctrine of a right of self-defence and resistance, he unfolded its implications and treated it as "destructive to all government".<sup>19</sup> Filmer's abhorrence to any theory of natural rights (Hobbes', Grotius', and others') is the clearest indication that the point of the 17th-century discourse on natural rights is to limit the arbitrary power of another agent,

especially the supreme agent of a commonwealth. Filmer stated the following: the "Natural Freedom of Mankind" is "a New, Plausible and Dangerous Opinion" (Ch. I. Patriarcha). I shall not enlarge any more on the point of natural rights. But I should like to quote Locke's own statement that if a man has a natural right or liberty, then no agent can legitimately rule him without his own prior consent:

Men being, as ..., by Nature, all free, equal and independent, no one can be put out of this Estate, and subjected to the Political Power of another, without his own Consent. The only way whereby any one divests himself of his Natural Liberty, and puts on the bonds of Civil Society is by agreeing with other Men to joyn and unite into a Community (ST, 95).

(2) I have removed two of our deeply entrenched and misguided approaches to the 17th-century discourse on natural rights, I have also stated the general point of the 17th-century discourse on natural rights (in the proper sense of "rights" rather than in the improper, Hobbsian sense of "a right to all things"). I shall now discuss the specific manner in which Locke uses his account of appropriation to limit the supreme power of a commonwealth. Our question is how he connects Chap. 5 ("Of Property") with Chap. 11 ("Of the Extent of the Legislative Power"). The sequel to his story of pre-political appropriation is the following: The economically developed state of nature becomes a "very unsafe, very unsecure" place. It becomes "full of fears and continual dangers" (ST, 123). To be sure, every man has an exclusive right of disposal over "his own Person and [expanded] possessions". He "hath such a right". "[Y]et the Enjoyment of it is very uncertain, and constantly exposed to the Invasion of others" (123). Why is the state of nature so insecure and uncertain now? Locke answers: "the greater part [of mankind are]

no strict Observers of Equity and Justice" (123). He rephrases this answer as follows: "the pravity of mankind" is "such, that they had rather injuriously prey upon the fruits of other men's labours than take pains to provide for themselves" (A Letter concerning Toleration, Works, VI, 42). Locke's characteristic legalism and moralism prevent him from stating any socio-economic cause of the "pravity of mankind". The socio-economic causes are the expansion of unequal possessions, and the scarcity of unappropriated resources introduced by the use of money. The portion which man "carves" can no longer be "easily seen"; men in overcrowded parts of the earth collide with each other, and begin to invade one another's demarcated territory. What could not happen in the primitive golden age of appropriation tends to happen: "controversie about the Title" and the "incroachment of the Right of others" (51). A commonwealth, and a government, are established as an effective remedy for this controversy-ridden and economically-developed state of nature. Locke says:

The great and chief end therefore, of Mens uniting into Commonwealths, and putting themselves under Government, is the Preservation of their Property [i.e., their Lives, Liberties and Estates] (124).

The statement quoted above is all too famous. Many would regard it as "the locus classicus for Locke's view" of the relationship between property and government, as Peter Laslett says (note to ST, 124). Hence, most commentators stop their expositions at this point. This is a mistake. For one thing, the quoted sentence is almost certainly a copy of Cicero's sentence in De Officiis.<sup>20</sup> As such, it is not distinctively Lockean, though unlike Cicero, Locke clearly indicates that what is a man's own, or suum, or his property, consists not only of

his estate but of his life and liberty. But more significantly, the quoted passage says nothing about the limits of the supreme power of a commonwealth.

To move beyond Locke's statement about the "chief end", we must pay special attention to the distinction which he draws between "government" and "society" (or "community" or "commonwealth"). Unfortunately, he does not explicitly draw this distinction until he comes to Chap. 10 of the Second Treatise ("Of the Forms of a Commonwealth"). In the earlier chapters, Locke uses the idea of "a political society", i.e., the idea of a society under government: or else, he uses the term "community" or "society" without sharply distinguishing it from "government" (e.g., "Men have so consented to make one Community or Government" (95)). But in Chap. 10, Locke draws a sharp distinction between "government" on the one hand, and "society" or "community" or "commonwealth" on the other hand. In Chap. 10, Locke states that "the Form of Government" (e.g., a perfect democracy, oligarchy, monarchy, etc.) depends on who (or what group of men, or what section of the community) holds the "Supreme Power" or "the Legislative Power" (132). A particular form of government is determined by the "Majority" of the "Community" (132). The two terms "society" and "community" are synonymous, and according to one remark Locke has made (in ST, 133), "community" and "commonwealth" are also synonymous. "By Common-wealth, I must be understood all along to mean, not a Democracy, or any Form of Government, but any Independent Community"(133). The distinction between "government" and "community" (or its equivalent) is designed to capture a more basic distinction between the "supreme" or "legislative" agent and the "community" (or its

equivalent). The "community" is superior to the "supreme" agent of a commonwealth, i.e., the legislative agent, or the magistrate. The "Community" may "dispose of it [i.e., the Legislative Power] again anew into what hands they please, and so constitute a new Form of Government" (132). The "Legislative" is "only a Fiduciary Power to act" for "the trust reposed in them" by the community, or the "people" (149). As it is clear from this, the distinction between "government" or the "legislative" on the one hand, and "society", "community", "commonwealth", or the "people" on the other hand, is a device to limit the "supreme" power which may be arbitrarily exercised. The distinction is emphasized again in Chap. 19 where Locke discusses the people's right of "revolution", i.e., their right to alter the established legislative agent. A similar distinction was used by Pufendorf and George Lawson who tried to limit the power of the magistrate.<sup>21</sup>

Locke's Ciceronian statement about "the great and chief end" concerns a two-stage process of forming "commonwealths" and "government". First, men "unite themselves" into commonwealths, or communities, or societies, for the effective protection of their rights. Secondly, they "put themselves" under "government" for the effective protection of their rights. If men unite themselves into a commonwealth and put themselves under government, then they have formed "a political society", i.e., a society under government. I shall first describe Locke's account of the generation of a commonwealth (or a society, or a community).

Each man agrees with others to form a commonwealth, or a community, or a society. This union is accomplished by each man's "own Consent" (95), or his "original Compact" (97), or the "original

Agreement" (243). This is an agreement to "joyn and unite into a Community, for their comfortable, safe, and peaceable living one amongst another, in a secure Enjoyment of their Properties" (95). Each man "gives up" his natural power of punishment to this newly formed collective body. He "resign[s] it up into the hands of the Community" (87); he "resign[s] it to the publick" (89); or he "give[s] [it] up ... into the hands of the Society" (131). As we have already seen, each man also gives up a minimal degree of his natural power to dispose of his person and goods so that "the preservation of himself" becomes compatible with the "preservation" or the "good" of "the Society" (129, 131). Since the whole society is formed for the chief purpose of the preservation of each man's rights rather than the regulation of his rights, each man must give up only a minimal degree of his natural power of disposal. Locke makes it abundantly clear that the "society", or the "community", or the "commonwealth", is a collective body. It has a will of its own, which Locke identifies with "the will and determination of the majority" of its members (96). It has its own "Power to Act as one Body" (96), which is nothing "but the joynt power of every Member of the Society" (135). The "judgments of the Commonwealth ... indeed are his own [i.e., each member's own] Judgements" (88). Locke frequently speaks of the "will" and "act" of one society (151, 157, 158, et passim). Everyone who has joined this collective body is understood to have consented to the rule of the majority, or "the greater force" of that body (96). Once every individual has transferred his natural power of punishment to this collective body, it "can never revert to the Individuals again, as long as the Society lasts" (243).

Kendall, Macpherson, and others have used a crude label "collectivism" to designate Locke's account of the "society", or his account of the majority rule within the society.<sup>22</sup> In so doing they have understood nothing, and misunderstood everything. Locke is performing a kind of dialectical trick here. He is doing to Hobbes what Marx does to Hegel. Locke is turning Hobbes upside down. He is presenting a very crude account of a collective, social agent in order to defend its members' rights against the supreme agent of a commonwealth. Locke dialectically transforms Hobbes' account of the united strength of a commonwealth. It is fairly clear that his dialectical transformation derives its inspiration from Pufendorf's earlier attempt to turn Hobbes upside down. Locke's talk about one body, one judgement, one will, and one act of "the society" is a faint copy of Pufendorf's personification of civitas. Pufendorf himself took over the idea of a personified civitas from Hobbes, when he criticized Hobbes' account of the generation of a commonwealth.<sup>23</sup> The point of Locke's idea of the collective society becomes clear when he discusses the right of "revolution", i.e., the right of changing an old, arbitrary legislative agent. Locke needs one collective body to justify the right of "revolution".

Locke says: "the Majority have a Right to act and conclude the rest" (96). So we naturally ask if the majority have a right to alter the existing distribution of rights and possessions among its members according to their will. But obviously, the majority do not have any such right. The "society" is established for the purpose of the "preservation" (and minimal "regulation") of the rights of its members. The principle of the "act" of the society, i.e., the majority-rule principle, is a means to this end. The majority "act"



in order to establish a legislative agent whose obligation is to preserve (and regulate) the rights of its members. Locke is not a majoritarian democrat who justifies an alteration of the existing distribution of rights by appealing to the will of the majority. If he were, he would be supporting "arbitrary" government — a government of men by the will of the majority, rather than a government of laws which protect the rights of the members of the whole society. Locke is a constitutionalist who claims that the majority of the people establish (or ought to establish) a government of laws as a means to the chief end of preserving the existing distribution of rights. Locke's "majority" is, of course, an idealized "majority" who want to, and ought to, preserve the rights of all members of the society, not the real and suffering majority of the 17th-century who did not own land. His "revolution", as I already indicated, is not a social revolution. It is merely a restoration of a legal order which preserves everyone's right, or an act of revolving back from tyranny to the rule of law.<sup>24</sup> Thus there is no room for interpretive disputes about the role and obligation of Locke's collective "society". Its role is to establish or remove a legislative agent, according to the will and judgement of the (idealized) majority. Its obligation is to preserve men's rights. To quote Locke's own words: "the society, or Legislative constituted by them ... is obliged to secure every ones Property by providing against those three defects" of the state of nature; namely, the lack of "establish'd standing Laws, promulgated and known to the People", the lack of "indifferent and upright Judges", and the lack of "the force of the Community" which backs up the sentences of the judges (131; also, 124-6).

Locke's use of the idea of the "society" makes his political theory complex. When he discusses the "extent" of the legislative power of a commonwealth, he tries to determine the obligations of the legislative agent of any commonwealth by reference to the whole society in which men have their exclusive rights (or properties). The legislative agent manages the affairs of the whole society rather than the affairs of a particular section of the society, by handling the relation of right-holders. This is why Locke defines "government" as "the establishment of Society upon certain Rules or Laws" (Essay, IV, iii, 18).

Locke stipulates four obligations for those who exercise the supreme power of a commonwealth. First, the obligation to administer justice. Secondly, the obligation to make and execute laws for the good of the whole society. Thirdly, the obligation to obtain the consent of the society in matters of taxation. Fourthly, the obligation to hold the supreme power, unless the society or the people wish to transfer it to any other hand. (These obligations, or "bounds", of the legislative agent are summed up in ST, 142.) Of these obligations, the first obligation to administer justice and the third obligation to obtain the consent of the society for taxation are derived from the "chief end" of men's "uniting themselves into a society". The second obligation of the legislative agent, i.e., the obligation to act for "the public good", is a general slogan which Locke derives from the spirit of the law of nature, i.e., "the preservation of Mankind" (135). It has little significance, apart from the preservation and minimal regulation of the rights and possessions of private individuals within the collective society. In what follows, we shall concentrate on Locke's central claim about the extent of the legislative power — his claim about the administration of justice.

Locke's claim about the state's obligation to administer justice is an antithesis to the view that the supreme agent has a right to settle an interpersonal dispute of rights arbitrarily. Locke says:

The Legislative, or Supream Authority, cannot assume to its self a power to Rule by extemporary Arbitrary Decrees, but is bound to dispense Justice, and decide the Rights of the Subject by promulgated standing Laws, and known Authoris'd Judges (136).

The legislative agent, and its inferior magistrates, ought to settle any controversy over "the Rights of the Subject" publicly, regularly, and impartially. The administration of justice presupposes that men have "rights". It ought to serve the chief end of their uniting into a society, i.e., the preservation of their rights or "properties". Locke's claim about the administration of justice can be restated as follows: the supreme agent of a commonwealth ought to "preserve" the rights (or "properties") of the members of the whole society, not by his will but by positive laws and impartial judges.

Locke frequently speaks of the "preservation" of "property" rather than "properties". This gives the impression that the preservation of "property" is different from the preservation of the society of property-holders or right-holders. This is a false impression. To "preserve" a man's property means to prevent another man from invading his property, and to correct any act of invasion if it occurs. The "preservation of property" should be rephrased as the "mutual preservation of "properties" (or "rights"). In fact, Locke himself says that men unite themselves into a society for "the mutual Preservation of their Lives, Liberties, and Estates" (123). But to clarify the idea of mutual preservation further, we should say that

men unite themselves into a society for the purpose of establishing a violence-free relationship among themselves, where "violence" means one man's violation of another's exclusive right of disposal. Locke's claim about the legislative agent's obligation is that the agent ought to sustain a violence-free society of right-holders by executing laws impartially, rather than by executing his will inconstantly. If a legislative agent fails to offer a legal protection of their rights, it is a breach of "trust". The society, or the people, set up a legislative agent "with this trust, that they shall be govern'd by declared Laws" (136). Hence, the people have a right to remove an agent who does not offer a legal protection of their rights, i.e., a right of "revolution" (222).

Let us consider how Locke defends his claim about the administration of justice. First, the legislative agent does not have an arbitrary power over men's lives, or liberties, or possessions, because the legislative power is nothing but "the joyn't power of every Member of the Society" transferred to a legislative agent, and because the joint power of every member of the society is derived from each man's non-arbitrary, limited power in the state of nature (135). In short, the legislative power is not arbitrary because nobody has an arbitrary power in the state of nature (135). Secondly, the legislative agent ought to preserve the rights of the member of the whole society by laws and judges, because men's "chief end" of forming a society is the mutual preservation of their rights; and because positive laws and judges alone can effectively prevent, and correct, the violation of rights among men. Given men's passions, interests, and biassed judgments, a peaceful settlement of disputes would be impossible without "promulgated standing laws" and "known authorized judges" (124, 125,

136). The "Laws establish'd in that Society" are the "great instrument and means" to achieve the great end of men's uniting into the society (134).

I have discussed what comes after Locke's account of appropriation, in order to arrive at the central claim he makes against the arbitrary power of the state. Some readers might be wondering whether I have not forgotten the original question concerning Locke's purpose of writing his account of appropriation. I have not. The best and safest way to understand his purpose of writing Chap. 5 is to sum up what comes after Chap. 5. I shall briefly sum it up. First, Locke wants to defend a government of laws, and he wants to attack a government of will. Secondly, he tries to establish the following central claim against a government of will: the supreme or legislative agent of a commonwealth ought to preserve men's exclusive rights by the impartial administration of laws. Thirdly, in order to establish this central claim, Locke establishes another claim that men unite themselves into a society for the chief purpose of the mutual preservation of their exclusive rights. Their exclusive rights have definite objects: their lives, liberties, and possessions (or estates). Notice that the preservation of a right presupposes a right. Fourthly, therefore, Locke establishes another claim that each man has an exclusive right of disposal over his "life, liberty, and possessions", before the formation of a society (a fortiori, a political society). In other words, he tries to establish the claim that every man's "life, liberty, and possessions" are his "property", independently of any social or political authority. If he can establish this claim about "natural rights", then he can limit the arbitrary power of another agent including the society and the supreme agent of a commonwealth.

As we have seen, this is the point of "natural rights". Locke's individual men voluntarily give up their natural power of punishment (and a minimal degree of their power of disposal) to the majority of the society first, and then to the legislative agent of a commonwealth. But the principle of his political theory is simple. Men who have "natural rights" over their lives, liberties, and possessions (or men who have a "property in" their persons and goods) permit another agent to rule, as long as it serves their purpose.

(3) Let us consider how Locke tries to establish the claim that every man has an exclusive right of disposal over his life, liberty and possessions, independently of any social or political authority. This claim, however, is ambiguous. We need to make the claim more specific. According to Locke's account of pre-political appropriation, men's possessions change their size. Primitive men have no possessions in the first place, and they acquire their possessions by their honest labour. At the end of the legitimate pre-political process of acquisition and exchange, men have the unequal and disproportionate possessions of the proto-17th-century kind. Since men's possessions change their size depending on their economic activities, the question naturally arises as to what Locke precisely means by his tripartite formula of property, i.e., "lives, liberties, and possessions (or estates)." In fact, his tripartite formula means one thing before Chap. 5, and it means quite another thing after Chap. 5.

In Chap. 2 of the Second Treatise, Locke speaks of every man's "Life", "Health", "Liberty", and "Possessions" as the objects which nobody else ought to harm (6). Everyone's "possessions" here means the minimal possessions which tend to "the Preservation of [his] Life" (6).

In Locke's view, "my Horse or Coat" counts as my minimal possessions. Together with my life and liberty, those minimal possessions constitute my minimal "property" which nobody can take arbitrarily. In the state of nature prior to appropriation, "I may kill a Thief" who invades my minimal property; I have a right of war, or a right of self-defence, or "a liberty to kill the aggressor" (19). As I noted in the beginning of this chapter, every man has a minimal "property", or an exclusive right of disposal over his life, liberty, and the minimal possessions he needs for his subsistence. Everyone has this right simply by virtue of the natural status God granted to every member of the human species.<sup>25</sup>

But "property", according to Locke's preferred usage, signifies a larger, exclusive domain of disposal (i.e., control). This larger domain is said to consist of each man's "life, liberty and possessions (or estate)". With the exception of a new word "estate", the components of "property" appear to be the same. Yet what Locke means by "possessions" after Chap. 5 is significantly different from what he means by the same word before Chap. 5. After Chap. 5, he means by it those possessions which men enjoy in the 17th-century political society. They are disproportionately expanded possessions of men. And it is those 17th-century possessions that Locke wants to defend against the arbitrary power of the state. For this purpose, Locke tries to establish the claim that every man has a natural, exclusive right of disposal over his 17th-century possessions, just as he has a natural, exclusive right of disposal over his life and liberty. He establishes this claim by an oblique method.

As we have seen, it is Locke's view that every man has an exclusive right of disposal over his "life and liberty"

(and health, and minimal possessions) independently of any social or political authority. But he needs to include men's 17th-century "possessions" in his list of men's enlarged property, "lives, liberties and possessions". In the beginning of Chap. 5, Locke restates the claim that every man's "life and liberty" are his "property". By using a different locution, he makes the same point: every man has "a property in" his "person" (ST, 27).<sup>26</sup> This is the premise of his account of appropriation. Within Chap. 5, he tries to show the following: men have exclusive rights of disposal over their proto-17th-century possessions independently of any social or political authority, because they have converted the original community of things by the legitimate pre-social and pre-political means of acquisition and exchange. Thus Locke establishes the claim that men's proto-17th-century possessions, as well as their lives and liberties, are their "properties" independently of any social or political authority.

Men's "proto-17th-century" possessions, strictly speaking, are not identical with their "17th-century" possessions. This is why I have said that Locke's account of appropriation is an oblique attempt to establish men's exclusive rights over their 17th-century possessions. I used the expression "the proto-17th-century" world of property earlier (Sect. 1. 1 above). It is the world where men can hoard as much gold and silver as they please without injuring anyone; and it is the world of growing commerce where men possess unequal and disproportionate portions of the earth. Though this proto-17th-century world has main features of the 17th-century world of property. Locke's account of appropriation does not present it as the world which existed in the 17th century. In Chap. 5, the proto-17th-century world is presented as the world which



emerged in the remote past, prior to the formation of political societies in different parts of the world. The "proto-17th-century world" is, indeed, a peculiar world. It is the 17th-century world of property which Locke transports to the remote, pre-political past by his power of imagination. This peculiar world is Locke's own invention. In other words, it is "a theoretical entity". It is precisely because this world is a theoretical entity that it is difficult to grasp the point of his account of appropriation.

Let us take a close look at Locke's oblique manner of talking about 17th-century possessions. If the point of Locke's account of appropriation is to establish a claim about men's 17th-century possessions, why is it that he writes about the remote past — "the beginning of the world" first, and then the proto-17th-century world which supposedly emerged in the remote past? One might answer this question by saying that Locke is interested in offering a "conjectural hisotry" of the development of economy and property in the remote past. He does offer a "conjectural history" of property of a kind. But his interest in factual investigations is limited, as far as Chap. 5 is concerned. (Here I am using the expression "conjectural history" in Dugald Stewart's sense, with his emphasis that it is an aid to factual investigations and a proto-type of a social science.<sup>27</sup>) The reason why Locke speaks about the remote past is two-fold. First, the original community of things existed in the beginning of the world. Secondly, if he uses the model of the remote past, he can easily establish the claim that each man was able to appropriate a portion of the world by labour without injuring anyone. In other words, Locke can make use of the circumstances of abundance, low productivity, and low consumption, to drive home the point that each man's labour was

a practicable and legitimate mode of acquiring external goods as his property. For these reasons (rather than the reason of his historical curiosity) Locke adopts the remote past as the setting for the beginning of property. This procedure in turn forces him to present the proto-17th-century world of expanding property as a world of the remote past. He is forced to sustain the continuity of his narrative. Besides, as we have seen (Sect. 1. 1 above), he assumes that men did not stay in the state of nature very long. Thus we can read the whole of Locke's account of appropriation in the manner of an inflexible historian. We can read it as a history of appropriation, from the remotest past when God gave the world to mankind in common to the remote pre-political past when political societies were founded in different parts of the world.

As long as we adopt this historical or chronological reading, there remains a gap between the remote past and the 17th century. We might fill the gap by imagining that appropriation continues in a similar fashion after the formation of political societies, and assuming that Locke did not write this sequel but left it to the imagination of his readers. The historical reading of Chap. 5, combined with this solution to the chronological gap, may appear to be an intellectually respectable reading. I admit that we cannot entirely brush aside this reading. Up to a certain point, Locke invites us to treat his account in this way. However, this reading is one-sided. It is based on the false assumption that he wrote his account primarily as a historian. Above all, it does not enable us to grasp the point of his account. As I emphasized in Sect. 1. 1 above, his account is primarily a story, an extended metaphor, or a myth. Locke wrote it as a believer and an articulator of his beliefs, rather than a chronologist of events.

In order to grasp the point of his myth, we must apply Lévi-Strauss' technique of reading it backward, with the understanding that Locke's aim is to establish the claim that men have natural, exclusive rights of disposal over their 17th-century possessions. By reading it backward, we can clearly see how Locke projects the features of the 17th-century world of property to the "beginning of the world"; and to the successive pre-political worlds of property. By this technique of disclosure, we can turn his oblique account of 17th-century appropriation into a straight-forward account.

To disclose the "meaning" of Locke's myth, we must note that he tacitly appeals to an ad hoc hypothesis in Chap. 5 which conflicts with his assumption that men stayed in the state of nature only for a short while. This ad hoc hypothesis is the following: men did not come to form political societies until the 17th century. This hypothesis might appear ridiculous. But the "political societies" might mean the political societies as they ought to exist, not the political societies as they really existed in the past. (Strictly speaking, therefore, this hypothesis reflects Locke's deeply-held belief that a "political society" in the proper sense of the word emerged in 17th-century England. What is really ad hoc is the way Locke conflates some ideal political societies of the 17th century and some real political societies of the past.) Men "settle" their properties in the ideal political societies where positive laws "preserve" and "regulate" them. Locke's scattered remarks about the settlement of property towards the end of Chap. 5 are his defence of one feature of 17th-century England, i.e., the growth of the rule of law. No historian would insist that primitive political societies in the remote past were founded on the principle of the rule of law

(which protects men's properties). Here is one example of Locke's projection of the 17th-century world. Another example of his projection is the proto-17th-century world of expanding property. I have already explained this. As far as its features are concerned, the world of expanding property is a copy of the 17th-century world. 17th-century English readers would have had no difficulty associating the unequal expansion of landed property with their world of expanding property. They knew their real "industrious and thriving men". Finally Locke projects a feature of the 17th-century world to the remotest past. The isolated individual labourers acquire their properties by their own labour. Indians, hunters, and gatherers, and cultivators appear in Locke's story. Are they really taken from the past? Locke takes them from the past. But he transforms them into fictional characters. In the real past, land was acquired by various violent means (conquest and the forceful occupation of every description); and it was cultivated by cooperative labour. The isolated labourers, Indians, hunters, and gatherers, are Locke's invention.<sup>28</sup> Locke's account of appropriation is a fiction about pre-political appropriation, though it contains some historically sound judgements (e.g., about the low productivity and consumption of primitive economy, and the difficult material condition for human life in the remote past, etc.).

We can thus detect Locke's projection of the 17th-century world of property into the remote, pre-political past. A conscientious reader of his account of appropriation, at this point, is bound to be puzzled. If we read his account from left to right, we can treat it as a history of appropriation in the remote past. If this is the case, his account cannot be an account of 17th-century appropriation at the same time. On the other hand, if it is an account of 17th-century

appropriation, then it cannot be a history of the remote past at the same time. This is a genuine puzzle to which Locke offers no solution. Incredible as it may seem, he wants to maintain a logically impossible position. He holds that men agreed to form political societies in the remote past and in the 17th century at the same time; that they expanded their properties by engaging in commerce in the remote past and in the 17th century at the same time; and that they began to have a property in the external world by their labour in the remotest past and in the 17th century at the same time. This intellectual obscurity is a consequence of the two incompatible views Locke holds. First, men come to have 17th-century possessions as their property in the pre-political world; and secondly, the pre-political world began with the remotest past when God created the world and gave to mankind in common, and ended in the remote past. This obscurity cannot be removed by any intellectual or logical method. However, Locke removes this obscurity by enchaining his readers.

(4) 17th-century readers of Locke's account of appropriation can easily grasp the point of his account because it enchants them from the start. The charm of his story lies in the fact that it makes 17th-century readers feel that they are a part of the story he tells about the beginning, expansion, and settlement of property. For this reason, they can grasp the "meaning" of his story from an "internal" viewpoint. They can grasp it without making a special effort to read it backward. 17th century-readers believed in God and His grant of the world (to mankind in common, or to Adam exclusively), so that they could understand Locke's statement of the original community in the opening paragraph without asking an intellectual question about the precise time when God granted the world. The second paragraph of Chap. 5 makes mention of

"the wild Indian, who knows no Inclosure" (26). The Indian is an American Indian as perceived by a 17th-century Englishman, so his readers can imagine the 17th-century American Continent. From the start Locke invites his readers to imagine their world of property, i.e., their 17th-world. In "the beginning all the World was America" (49) — this statement expresses Locke's view that his readers only need to think of their world to think of the remotest past. In the middle of his account, Locke addresses the question how "the Property of labour should be able to over-balance the Community of Land" (40). No reader would be tempted to treat Locke's comments on this question as a 17th-century illustration of what happened in the abstract, remote past. His comments are clearly intended for those readers who are impressed by the rapid expansion of privately-owned land and the concomitant diminution of common land in 17th-century England. Sections 40-43 of Chap. 5 make them forget that Locke's account of appropriation had something to do with the remote past. Without any doubt, they would feel that Locke is discussing their appropriation at this point. As I have noted already, Locke's further reference to the disproportionate portions of the earth suggests to his readers that he is speaking about the "industrious and thriving men" of the 17th-century. Consequently, his readers would feel that their landed property have expanded legitimately before a political society was formed. Finally, Locke enchants his readers completely by telling them that they agreed to form political societies to settle their properties. Thus the moral of Locke's account of appropriation is crystal clear to those who lived in the 17th century and wanted their properties to be legally protected against the arbitrary power of government. His story drives home the point that they have natural, exclusive rights of disposal over their

current possessions. Though Locke's account of appropriation is an intellectually obscure construct, it can convey to them the unambiguous message that their current possessions have legitimately arisen from the original community of things. In other words, one can apprehend the "meaning" of Locke's myth by taking the attractive part and discarding the rest.

(5) The Confirmation of Locke's Purpose: Let me summarize my detailed discussion. Since Locke's account of appropriation is a myth, I have taken special care to clarify its point. First, I have shown that the point of natural rights in the 17th-century context was to limit the arbitrary power of "another" agent including the state ((1) above). Secondly, I have shown how Locke uses the claim that men's "lives, liberties, and possessions" are their "property". He uses it to establish claims against the arbitrary power of the state — above all, to establish the claim that the state ought to administer justice to preserve a peaceful society of right-holders ((2) above). Thirdly, I have shown that Locke tries to establish the claim that men have exclusive rights of disposal over their current possessions, independently of any social or political authority. He uses an oblique method here. His method is oblique and obscure because he uses the model of the "proto-17th-century" world, the world which seems to have existed long ago despite its typically 17th-century features. ((3) above). Fourthly, I have shown that it was not difficult for Locke's contemporaries to understand the point of his story of appropriation, despite its intellectual obscurity ((4) above). To sum up, then, what Locke does is the following; In Chap. 5 of the Second Treatise, he obliquely establishes the legitimacy of the possessions which men had in their late 17th-century economic society. Locke establishes their pre-political legitimacy

in order to claim that the state ought to preserve their possessions (as well as their lives and liberties) by means of laws and judges.

I have treated Locke's account of appropriation as a device against the arbitrary power of the state, and a device for a constitutional government (or a government of laws). My exposition is solidly based on what Locke actually said, and in this respect it differs from those exciting interpretations which commentators have provided in recent years. Now I should like to conclude by making two clarificatory remarks on my own exposition.

First, I have said that Locke's account of appropriation is what Hobbes would regard as a "doctrine opposite to government", a doctrine opposed to arbitrary or absolute government. This does not mean, however, that Locke did not intend to defend one man's possessions against the invasion of his fellow-citizens. Of course, he argued that each man's possessions ought to be protected against his fellow-citizens. But the important point is that he could have maintained this position without granting each man a natural (or pre-political) right of property. Hobbes indeed argued that the absolute sovereign should protect each citizen's possessions against the violation of his fellow-citizens. Locke's account of appropriation is an account of pre-political appropriation. He discussed pre-political appropriation, because he wanted to defend each man's possessions not only against the violence of his fellow-citizens but also against his magistrate.

Secondly, when I say that Locke's purpose is to protect men's properties (or a society of right-holders) by laws, I also affirm that he is trying to defend the smooth function of a modern economic society against arbitrary intervention. Locke's account of appropriation is based on his observation of the active side of the 17th-century



English economy. According to his idealized picture of England, each man acquires his property by his labour, exchanges his property voluntarily, and expands his property by the use of money. The state, then, ought to enforce the laws which preserve the smooth function of this economic society as much as possible. This is clear from what I have said about the "regulation" of the transfer of property (Sect. 1. 2 above). It will become clearer, when we come to consider the negative character of laws. I make this point here, in order to avoid the mistaken view that "a government of laws" has nothing to do with the economic society based on labour and commerce. It should be noted that the wage-relationship is contractual and pre-political (ST, 85). "Promises and Bargains for Truck" are said to be "binding" in the state of nature (ST, 14). These natural economic relationships are not discussed, but presupposed, in Locke's account of appropriation. In short, his talk about the "preservation" of "property" implies the preservation of the economic society where each man acquires his property by his labour, and expands it by means of commerce.

## PART 2. Locke's Theory of the State, with Particular Reference to his Concept of Justice

In Part 2, I shall discuss Locke's theory of the "bounds" (or "extent") of the supreme power of the state. I have already touched upon his theory by discussing his claim about the administration of justice (PART 1, Sect. 1. 3). What I attempt to do below is to provide a more elaborate exposition of Locke's theory of the "bounds" of the supreme power of the state. My primary task is to provide a more elaborate exposition of Locke's claim about the administration of justice. I shall undertake this task by clarifying his concept of justice, and its connections with other concepts such as "property", "law", and "charity". My secondary task is to discuss, briefly, two other bounds of the supreme power of the state — the bound of "the public good", and the bound of legitimate taxation.

### 2. 1 Locke's Concept of Justice: A Reconstructive Analysis

Locke's claim about the administration of justice, as we have seen, is the following: "The Legislative, or Supream Authority" "is bound to dispense Justice, and decide the Rights of the Subject by promulgated standing Laws, and known Authoris'd Judges" (ST, 136). He rephrases this obligation as follows: those who hold "the Legislative Power of every Commonwealth, in all Forms of Government" ought to "govern by promulgated establish'd Laws, not to be varied in particular Cases, but to have one Rule for Rich and Poor, for the Favourite at Court, and the Country Man at Plough" (142). It is clear, then, that the administration of justice, according to Locke, means the settlement of disputes among right-holders in accordance with promulgated equal laws and the decision of authorized impartial judges. We can also

say that the administration of "justice" is the impartial administration of "law" for the sake of the peaceful settlement of disputes. This concept of justice is a familiar concept associated with "a court". It is the concept of "corrective justice". Locke has this concept of justice, and he has a predominantly judicial concept of the state.

Since Locke does not use the word "justice" very often, we tend to forget that the concept of corrective justice is of central importance to his political theory. As we shall see later, "corrective justice" is to be distinguished from "distributive justice". We also tend to neglect his predominantly judicial concept of the state, because the supreme power of the state is said to be the "legislative" power rather than the judicial power. In what follows, I shall analyze Locke's concept of corrective justice in detail. I shall also show that he has a predominantly judicial concept of the state.

## 2. 11 Justice as the Practical Negation of Injustice

My analysis of Locke's concept of justice is reconstructive. He does not analyze the concept of justice he uses, nor does he use the word "justice" very often. So any analysis of his concept of justice is bound to be reconstructive. My reconstruction is based on Locke's own writings, and the major theoretical writings from which he derived certain elements of his concept of justice. The concept of justice is a complex concept which embodies several ingredients. The best way to approach Locke's concept of justice is to discuss its opposite first — his concept of injustice. Quite a few theorists try to clarify the concept of justice in terms of the concept of injustice (e.g., John Stuart Mill).<sup>29</sup> I shall take this indirect approach. When all things are considered, this seems to be the best way to clarify Locke's concept of justice.

To put it in a Hegelian fashion: injustice is a negation of another man's property, and justice is a negation of the negation. This negation of the negation is not an immediate negation of the negation of another man's property. In other words, it is not a simple retaliation. Rather, justice is a continuous process of avoiding and correcting the occurrence of injustice. To put it more analytically: to "administer justice" is to prevent and correct the acts of injustice by means of laws and judges, whereas to "perform a just act" is to avoid the injustice one might commit or to correct the injustice one has committed. If this view can be ascribed to Locke, then we can affirm that justice — whether it is the administration of justice or the act of justice — is the practical negation of injustice. Justice is the avoidance, and correction, of injustice.

Let me substantiate what I have said above. First, what is injustice? Locke gives an unequivocal answer in the Essay. In commenting on the demonstrable certainty of the proposition "Where there is no Property, there is no Injustice", he says that "property" is "a right to any thing" while "injustice" means "the Invasion or Violation of that right" (IV, iii, 18). Every student of Locke knows this definition of injustice. But we must note two additional points here. First, Locke is careless in defining "property" as "a right to any thing". Property, in his own view, is an exclusive right of disposal over an object. (The "object" is a man's person, or his external object.) The common "right" of everyone to an indefinite portion of the world is not "property". Leibniz, who knew jurisprudence, rightly pointed out that Locke's definition is contrary to the ordinary meaning of "property" as an "exclusive right" (emphasis in the original).<sup>30</sup> What Locke wanted to say is that "injustice" is the violation of "property", where property means "an exclusive right" over anything. In Some Thoughts concerning

Education, he stated: "children cannot well comprehend what injustice is, till they understand property, and how particular persons come by it" (Works, IX, 101). In this context, he defined "property" as "what is theirs by a peculiar right exclusive of others" (ibid.).

The second point we should note about Locke's definition of injustice is the following: "injustice" is the invasion or violation of one man's exclusive right (of disposal) by another man. This appears to be a trivial point because we usually take it for granted that a man cannot violate his own right. But this point is worth noting. It reminds us of the fact that Locke, like most theorists, treats the concept of injustice (hence, the concept of justice) as an other-directed concept. The concepts of justice and injustice are inter-subjective concepts. To use Hobbes' expression: "Justice" and "Injustice" are "Qualities, that relate to men in Society, not in Solitude" (Leviathan, Ch. XIII, 188). Locke briefly discusses how to teach children a just conduct, and refers to "justice" as a "great social virtue" (Works, IX, 101; emphasis added). The father, or the tutor, of children ought to make them realize "what little advantage they are like to make, by possessing unjustly of what is another's" (ibid., 102; emphasis added). A careful reading of Locke's writings reveals that he habitually indicates the other-directedness, or intersubjectivity, as a key component of the concepts of justice and injustice. For instance, thieves and villains are said to "keep Faith and Rules of Justice one with another" (Essay, I, iii, 2; emphasis added). Though they keep faith and rules of justice only for the sake of convenience, they do so "among themselves" because "Justice and Truth are the common ties of Society" (ibid., emphasis added). There is, of course, nothing novel about the intersubjectivity of Locke's concepts of justice and injustice. All

major theorists of justice treat justice and injustice as a matter of one man's relation to another. The idea of "doing oneself justice" is a metaphorical extension of the other-directed concept of justice. (Hence, if we want to understand the core of the concept of justice, we should not rely on the writings of a metaphorical philosopher such as Plato.)<sup>31</sup> Locke, at any rate, does not extend the concepts of injustice and justice to apply them to self-referential conducts.

To summarize my discussion of Locke's definition of "injustice", "injustice" means one man's violation of another's "property" or another's exclusive right (of disposal). The next question we must consider is this: what is justice? As I said, justice is a complex concept. For the sake of simplicity, we shall treat justice as a method of negating "injustice". The negation in question is practical rather than logical. There are two ways in which each man can "negate" injustice: he can avoid it, or he can correct it. There is a complexity here, however. We may treat each man as an agent or as a spectator. If we treat a man as an agent, then we may say that the justice of an agent is an act of avoiding the injustice he may do to another man, or an act of correcting the injustice he has done to another man. Let us call this notion of justice "a just act". On the other hand, if we treat a man as a spectator, then we may say that the justice of a spectator is to avoid or correct the acts of injustice which take place among other men. This justice should be "done", or "dispensed", or "administered" by an impartial spectator. For the lack of a better name, we may call this justice "the justice of a spectator", or "the administration of justice", and distinguish it from "the justice of an agent" (or "a just act").

The distinction I have drawn between the two kinds of justice is not common.<sup>32</sup> The distinction is mine, and it is an expository device. Locke uses the word "justice" in such phrases as "do justice" on an

offender (ST, 6), "administer justice" (20), "dispense justice" (136), and "the administration of Justice" (219). His usage, therefore, suggests that his concept of "justice" is closely connected with "the justice of a spectator" rather than "the justice of an agent". In so far as we respect Locke's use of the word "justice", we are bound to say that he is almost exclusively concerned about the spectator's prevention and correction of the violation of one man's property by another. However, the idea of "a just act" can be found in Locke's writings. In fact, this idea is of crucial importance to the understanding of the tradition of classical liberalism. So we shall not take a fetishistic attitude toward Locke's word "justice". Instead, we shall probe into his concept of justice by considering the agent who regulates his actions as well as the spectator who regulates the actions of others. I shall freely use the writings of other theorists to clarify the point of Locke's scattered remarks about justice. We should not presume that his thought about justice derived from a single historical source. Nor should we expect that he had a perfectly coherent idea about justice. In fact, a careful reading of Locke's writings suggests that he simply absorbed certain elements of the complex concept of justice from more than one source, without taking the trouble to make his thought about justice perfectly coherent.

## 2. 12 A Just Act, or the Justice of an Agent

Locke is one of the few modern theorists who discussed the justice of an agent without using the word "justice". His predecessors such as Hobbes and Grotius discussed in detail what an agent's just action is. So did his successors such as Hume and Smith. Nevertheless, Locke expressed the modern idea of a just act when he spoke of the "preservation of property". If a just act is the opposite of an unjust

act, and if an unjust act is the violation of another man's property, then it follows that one man's just act is his non-violation — or "preservation" — of another's property. To put it another way, a man acts justly when he abstains from another man's property, and when he restores what he has taken from another's property. ("Property" here means an exclusive right of disposal in general, or any object — not necessarily a material object — of the exclusive right). What is unique about this concept of justice? It is a negative concept. A just act is not a positive act for another man. But it is only a negative abstention from another man's exclusive right. It contains what appears to be an element of "action" — a restoration of another man's own object. Yet this restoration presupposes the taking, borrowing, or using of another man's own object. The basic idea remains the same: abstain from another man's exclusive right, or leave it intact.

We shall shortly see that Locke shares this typically modern, narrow concept of justice. But since his remarks on the justice of an agent are scattered in his writings, I shall first identify the tradition of this narrow, negative concept of justice. The first modern theorist who clearly formulated the narrow, negative concept of justice is Hugo Grotius. But the narrow, negative concept of justice can be traced back to Cicero and other ancient writers whom Grotius quotes. After Locke, Hume and Smith develop their theories of justice by taking Grotius' narrow, negative concept of justice as a point of departure. Let me first survey what Cicero, Grotius, Hume and Smith say about the concept of justice. I shall identify characteristic features of the concept of justice which figures in this modern Ciceronian tradition. Once those features are identified, it becomes easy to see that Locke has the same concept of a just act, despite the fact that he does not use the word "justice" to designate this act.



## (A) Cicero and Modern Ciceronians

In De Officiis, Cicero makes a number of remarks about the virtue of justice. He distinguishes "justice" from the virtues such as "prudence", "magnanimity" and "temperance". "Justice", as a general virtue distinct from these other virtues, is the following:

a care to maintain that society and mutual intercourse which is between them; to render to every man what is his due; and to stand to one's words in all promises and bargains, (Bk. I, Sect. V.)<sup>33</sup>

"Justice" is a social virtue, or a virtue which concerns the maintenance of human society. "To render to every man what is his due" (suum cuique tribuere) is a famous maxim which expresses the core of the concept of justice. Cicero interprets it negatively. He emphasizes that the first requirement of justice is negative: "no one should do any hurt to another, unless by way of reasonable and just retribution for some injury received from him" (Bk. I, Sect. VII; also, Sect. X). Each particular man has acquired his personal possessions by one method or another, and "it is but just that each should hold what is now his own". If "any one endeavour to take away from him" what is now his own, "he directly breaks in on common justice" (Bk. I, Sect. VII).<sup>34</sup> Thus suum cuique tribuere is "to abstain from any other man's own thing", or "to leave every man in the quiet enjoyment of his own goods". The first duty of a governor, according to Cicero, is to render everyone his own external goods; i.e., "to take care ... that each individual be secured in the quiet enjoyment of his own, and that private men be not dispossessed of what they have, under a pretence of serving and taking care of the public".<sup>35</sup>

Besides giving the negative interpretation of suum cuique tribuere, Cicero divides the virtue of maintaining society into two kinds. He

divides it into the negative virtue of justice, and the positive virtue of "beneficence, which may also be called either bounty or liberality".<sup>36</sup> Cicero further divides beneficence or liberality into two kinds: helping others by our labour and industry, and helping them by money (Bk. II, Sect. XV). For our purpose, it is sufficient to note that both kinds of liberality are the positive virtues of giving others what we have, for the benefit of others. By contrast, the virtue of justice is a negative virtue of not taking from others what they have, for our benefit.

Whereas Cicero presents his view of justice informally, Grotius tries to offer a conceptually rigorous formulation of the negative concept of justice. Well-informed historians of the modern theory of natural rights and natural law — Jean Barbeyrac, Adam Smith, and Henry Sidgwick — agree that Grotius' De Jure Belli ac Pacis is an epoch-making work.<sup>37</sup> But even those well-informed historians do not tell us very much about Grotius' significance in the history of the concept of justice. His significance lies in his attempt to formulate an unequivocally negative concept of justice, in opposition to Aristotle's idea of distributive justice. He provides a conceptually rigorous version of Cicero's negative interpretation of suum cuique tribuere by making use of the idea of a "right" in the proper and strict sense. Justice in the proper and strict sense is based on a "right" in the proper and strict sense. But the Aristotelian notion of "distributive justice", according to Grotius, rests on an imperfect kind of "right", or a "right" in the improper and extended sense of the word. Let us see what he says in some detail.

In his discussion of the different senses of "jus", Grotius stipulates the second sense of jus as follows: jus in the second sense "signifies a moral Quality in any person, sufficient to enable him justly to have or to do something" (De Jure Belli, 1, 1, 4). Jus in this sense

can be translated as "right".<sup>38</sup> There are two kinds of jus taken as "a moral quality" (or "a right"). One is a perfect moral quality called "faculty", while the other is an imperfect moral quality called "aptitude". The difference between the two types of rights consists primarily in this: If a man has a perfect right (or "faculty") over an object, then he can justly demand this object from others on his own authority and can use force to protect or restore it. By contrast, "aptitude" or an imperfect right to an object cannot be protected by force against others. Other men cannot be justly punished for not respecting a man's imperfect right.<sup>39</sup> According to Grotius, each man's "faculty" rather than "aptitude" is the "Right properly and strictly taken" (1, 1, 5). This "right" in the proper and strict sense is what civilians used to call suum, or "that Right which a man hath of his own" (1, 1, 5). It follows, then, that "suum cuique tribuere" presupposes each man's "faculty" or his perfect right. The Stoic maxim of justice thus comes to mean: "Abstain from what another man has by his perfect right (and restore what you have taken from him to him)."

Justice, understood in this narrow and negative way, is "Justice strictly taken" (1, 1, 8). Grotius calls this strict sense of justice "Expletive Justice". The label comes from the idea that if someone returns an object of another man's perfect right to him, he performs the obligation which he ought to have performed all along (just as he would fill an empty space of another man's own library by returning his book to him).<sup>40</sup> The restoring of another man's own object is an apparently positive act, but it is the performance of the negative obligation of abstention in disguise. Grotius insists that this is the "justice" in the proper and strict sense. Aristotle's "distributive justice" rests on each man's imperfect right

("aptitude", or "worthiness", or "fittingness"), and it is "justice" in an extended and somehow improper sense of the word. Grotius does not provide any closely reasoned argument to establish the insignificance of "distributive justice". But he associates the virtue of distributive justice with positive virtues which benefit others — such virtues as "mercy, liberality, and State Providence" (1, 1, 8). He also quotes Xenophon's story of Cyrus, in order to stress that the administration of justice ultimately ought to respect each man's perfect right and "expletive justice" rather than his imperfect right ("aptitude" or "fittingness") and "distributive justice". In Grotius' view, it is wrong to assign a long coat to a tall boy and a short coat to a short boy, if the tall boy has violently exchanged his own short coat for the short boy's long coat. Distributive justice must give way to expletive justice — or "justice" in the proper and strict sense of the word. To sum up Grotius' negative concept of justice: Justice in the proper sense presupposes another man's "faculty" or his perfect right. A just act essentially means an act of abstaining from what another man already has by his perfect right. Grotius emphasizes these points in his famous Prolegomena to De Jure Belli ac Pacis. "Justice" "wholly consists in abstaining from what is another mans", whereas "Injustice" is "nothing else but the detention of another mans Right" (Prolegomena, 44). He quotes Porphyry's definition of justice in his Annotation: "ut abstineatur alienis, neque noceatur non nocentibus", or "to abstain from what is anothers, and not to harm them that are harmless". We have already seen that this is also the core of Cicero's idea of justice. Finally, there is Grotius' more extensive statement on "justice" (in the proper sense) and a "right" (in the proper sense):

Now this very conservation of Society, as it is agreeable to humane understanding, ... is the foundation of that which is properly called Right. From whence ariseth our abstinence

from that which is anothers, and our restoring of that which we have detained, together with the full profits we have made of it: As also our obligation to perform our promises, our satisfaction for damages done unto others through our default, and the merit of punishment among men (Prolegomena, 8).

This passage is a modern equivalent of Cicero's extensive definition of the general virtue of "justice" (quoted earlier). It contains a reference to the obligation to keep promises, just as Cicero's extensive definition does. But the core of the concept of justice, as we have seen, is to abstain from what is another man's own (alieni abstinencia).

I shall make one final remark about the historical significance of Grotius' negative concept of justice. I have stated that his "expletive justice" is opposed to Aristotle's "distributive justice". But we should also note that Grotius' "expletive justice" is, in fact, his own version of Aristotle's "corrective justice" (De Jure Belli, 1, 1, 8, 1). Let us recall that Aristotle divided (partial) justice into "distributive justice" (dianemetikon dikaion) and "corrective justice" (diorthotikon dikaion). Aristotle considered "corrective justice" from the viewpoint of the rectification of an "inequality" that arises between those who interact, or the restoration of "equilibrium" or "a median between loss and gain".<sup>41</sup> Grotius, by contrast, emphasizes that the rectification of one's violation of another's (perfect) right is a matter of filling the empty space of the victim which ought to be filled. Hence, we can offer the following description of Grotius' achievement: Grotius transforms Aristotle's "corrective justice" into his "expletive justice" by using the idea of a perfect right or "faculty", and then elevates the transformed concept of "corrective justice" above Aristotle's "distributive justice".

For a further identification of the modern Ciceronian tradition of justice, I shall briefly discuss Hume and Smith. I shall omit Pufendorf since his discussion of justice and injustice (though not "injury")

is more Aristotelian than Ciceronian.<sup>42</sup> Hume's relationship to Cicero's De Officiis and Grotius' De Jure Belli ac Pacis is very interesting, though most of Hume commentators ignore — or remain ignorant of — his relationship to Cicero and Grotius. I shall state in one paragraph what philosophical commentators (like J.L. Mackie and J. Harrison) do not say in a book.<sup>43</sup> I shall also clarify, in one paragraph, the points which historical scholars (like D. Forbes and K. Haakonssen) have failed to clarify in a book.<sup>44</sup> My short remarks in this paragraph, therefore, are valuable. Let us concentrate on the much neglected Grotius-Hume connection. Hume explicitly states that his account of the origin of justice is, in outline, similar to what Grotius hinted at (ENQ, 307, n. 1). In his letter to Hutcheson (17 Sept. 1739), he mentions Grotius and Pufendorf. In A Treatise of Human Nature, Hume asks the following question: "Wherein consists this honesty and justice, which you find in restoring a loan, and abstaining from the property of others?" (THN, 480). "Restoration" and "abstention" suggest that Hume's idea of justice, as well as his account of the origin of justice, derived from Grotius' De Jure Belli ac Pacis. This conjecture turns into a conviction when we read a passage of the Treatise carefully. At one point, Hume speaks of "a sense of duty in abstaining from that object, and restoring it to the first possessor" (THN, 527). Then he says: "These actions are properly what we call justice." To put it more precisely, the acts of abstaining from the object of another man, and restoring it to him, are what Grotius calls "justice" in the proper sense of the word. In the same paragraph, Hume remarks that "this quality, which we call property" "vanishes upon a more accurate inspection into the subject, when consider'd a-part from our moral sentiments" (527). Here he is alluding to, and rejecting, the view of Grotius and Pufendorf that a right is a "moral quality". One

cautionary remark may be added here. Hume transforms Grotius' concept of justice not only by dropping the notion of a moral quality, but by restricting the application of the concept to external possessions. Grotius' concept applies to what is another man's own "thing", where a "thing" includes a man's life, liberty, or action. But Hume's concept of justice (or a just act) is an abstention from the external possessions of another man. In this respect, his concept is narrower than Grotius'. As for the Hume-Cicero connection, I shall only make one point. Hume divides social virtues into "benevolence" and "justice". This division, which is conspicuous in the second Enquiry, is unambiguously Ciceronian. Justice, unlike benevolence, is a negative virtue. Hume calls it "the cautious, jealous virtue of justice" (ENQ, 184).

Adam Smith nicely summarizes the modern Ciceronian tradition of justice. It is he who has used the memorable phrase "negative virtue" in discussing the concept of justice. Unlike Hume, Smith holds that justice concerns the "person" of a man (i.e., his body and his liberty) and his "reputation" as well as his "possessions". He expresses the negative concept of justice as follows:

Mere justice is, upon most occasions, but a negative virtue, and only hinders us from hurting our neighbour. The man who barely abstains from violating either the person, or the estate, or the reputation of his neighbours, has surely little positive merit. He fulfils, however, all the rules of what is peculiarly called justice, and does every thing which his equals can with propriety force him to do, or which they can punish him for not doing. He may often fulfil all the rules of justice by sitting still and doing nothing. (TMS, II, ii, 1, 9.)

Smith's exposition is clear. As is often the case with his exposition, it contains the hint which we can develop to criticize the very concept that he is trying to elucidate. But what concerns us is the point that a man's just act, according to Smith, is his act of abstaining from hurting

or injuring his neighbours.

By "injury" he means the violation of another man's "perfect rights". By "perfect rights", he means "those which we have a title to demand and if refused to compel an other to perform". "Imperfect rights" are "those which correspond to those duties which ought to be performed to us by others but which we have no title to compel them to perform" (LJ, (A), i, 14). In drawing this distinction, Smith follows in the footsteps of Hutcheson, Pufendorf, and Grotius. In Smith's view, then, a just act is an act of abstaining from violating another man's perfect rights, or an act of refraining from taking the objects of another man's perfect rights. This is why he says that the "object of Justice" (or the object of the administration of Justice) is "the security from injury" (LJ, (B), 5); namely "the maintaining men in what are called their perfect rights" (LJ, (A), i, 1; i, 9). A man "merely as a man" has perfect rights over his person (i.e., his body and liberty), his reputation, and his estate, so that he can be "injured" in these three respects (LJ, (A), i, 12; LJ, (B), 7). Thus another man can act justly toward him, by not injuring him in those respects.

The negative virtue of justice which presupposes men's perfect rights, says Smith, corresponds to what "Aristotle and the schoolmen call commutative justice", and what "Grotius calls the justitia expletix" (TMS, VII, ii, 1, 10). Strictly speaking, the term "commutative justice" is Thomas Aquinas' invention. He introduced the term to broaden or make flexible Aristotle's concept of "corrective justice" (diorthotikon dikaion).<sup>45</sup> But this subtle point does not concern us. Smith is merely drawing attention to the distinction Grotius has emphasized — the distinction between "expletive justice" and "distributive justice" (or what Grotius calls "attributive justice"). Distributive justice, according to Smith,



presupposes men's imperfect rights. "Distributive justice" does not properly belong to "jurisprudence", though it remains a part of "a system of moralls" (LJ, (A), i, 15). The reason for this is that one who violates another man's imperfect rights (hence, distributive justice) cannot be forced to respect another man's imperfect rights, whereas he can be forced to respect another's perfect rights (hence, commutative justice). Smith is making what is essentially Grotius' point. Each man has an imperfect right to demand friendship, charity, generosity, or gratitude. To put it generally, each man has a "right" to "beneficence" though this "right" is not the strict right which other men can be forced to respect. For instance, "a beggar is an object of our charity and may be said to have a right to demand it" in "a metaphoricall sense" or in the imprefect sense of a right (LJ, (A), i, 15). But even if a man is not charitable to a beggar, he cannot be punished by the force of a law. Similarly, a man who remains ungrateful to his benefactor is guilty of "the blackest ingratitude", yet it is improper to "oblige him by force to perform what in gratitude he ought to perform" (TMS, II, ii, 1, 3). For he "does no positive hurt to any body." "He only does not do that good which in propriety he ought to have done" (ibid.). Smith clarifies the distinction between "commutative justice" and "distributive justice" (or between "perfect rights" and "imperfect rights", or between law and morals) by contrasting the positive virtue of "beneficence" with the negative virtue of "justice". "Beneficence" is always free, it cannot be extorted by force, the mere want of it exposes to no punishment", whereas "the observance [of justice] is not left to the freedom of our own wills". The virtue of justice "may be extorted by force", and the violation of perfect rights - "injury" - "exposes to resentment, and consequently to punishment" (TMS, II, ii, 1, 3-5).

The modern Ciceronian concept of justice, which I have clarified by reference to Grotius, Hume and Smith, has at least two features. First, the virtue of justice is a negative virtue. A just act is an act of abstaining from another man's right, or refraining from hurting or injuring another man. It is an act to avoid positive harm, and as such it is opposed to those acts which promote positive good — the acts of beneficence, benevolence, bounty, charity, and liberality. The negative virtue of justice makes social life tolerable and minimally peaceful, though it may not make it positively comfortable. Secondly, modern Ciceronians do not take "distributive justice" seriously. For them, "justice" in the proper or most significant sense is what Aristotle called "corrective justice". Of course, modern theorists do not produce the exact copy of Aristotle's concept of "corrective justice", or his concept of "distributive justice". Grotius and Smith transform Aristotle's "corrective justice" by linking it to the idea of "perfect rights"; and Hume transforms Grotius' version of "corrective justice" by abolishing the idea of perfect moral qualities and linking justice to external possessions alone. But despite the complex historical change which Aristotle's two-fold division of justice underwent, his division of justice remains useful for us. Aristotle's "distributive justice" (dianemetikon dikaion) concerns what pertains to the community as common yet divisible by allotment among its members. Distributive justice, says Aristotle, can be found in "the distribution of honors, of material goods, or of anything else that can be divided among those who have a share in the political system".<sup>46</sup> This type of justice, according to Grotius, Hume and Smith, is quite unimportant. Some may point out — rightly — that Hume did not exclude the question of distributive justice from his jurisprudence. But he made a significant remark that the question of distributive justice is "frivolous".<sup>47</sup> What is truly important to

modern Ciceronians is "corrective justice" (or its variants). This justice rectifies or remedies the injuries (or inequalities) which arise in dealings (or interactions) between private individuals. Private individuals are presumed to have certain objects as their "own" — or at least, as their de facto possessions (according to Hume) — prior to their public interactions.<sup>48</sup> They "deal with" one another (or "interact" with one another) either voluntarily or involuntarily. One may hire or buy or steal goods from another; one may praise or defame or murder another. In the process of transaction, injuries (or "inequalities", as Aristotle says) may arise. Nobody ought to injure another man, and if one has injured another, it ought to be corrected or rectified or ad-just-ed. This is the "corrective justice" to which modern Ciceronians attach tremendous significance. It is the justice of private right-holders who may violate one another's rights.

#### (B) Locke

Having finished a somewhat long preliminary, we now return to Locke's texts. Locke does use the negative concept of a just act. He interprets suum cuique tribuere negatively, translating "suum" (Grotius' "faculty" or "perfect rights") into his word "property". Though his concept of justice is by no means a clear-cut concept, it centers around the question of avoiding the violation of another's exclusive right rather than the question of having a fair share of the common stock. Furthermore, he opposes "justice" to "liberality", "bounty", and "charity". Let us see these Ciceronian features of Locke's concept of justice by pulling together his scattered remarks from his writings.

I shall begin with a passage of the First Treatise where Locke contrasts "justice" with "charity":

As Justice gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him; So Charity gives every Man a Title to the so much of another's Plenty, as will keep him from extream want, where he has no means to subsist otherwise (FT, 42).

Unless we read this passage carefully, we are likely to misunderstand it. A man who already owns "plenty" ought to do a positive act of charity. Justice, insofar as it is intelligible as the just act of an agent, is to leave intact the right which everyone else already has over "the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him". Locke's phraseology – "Justice gives every Man a Title" – might suggest that it is just to (re)distribute external goods to everyone according to an independently conceived distributive principle. But we should not be deceived by the word "give". Locke is merely translating the Ciceronian maxim of suum cuique tribuere as "giving" "every man" what he already has as a result of his, and his ancestors', labour. His interpretation is entirely negative. As Kant remarked, if suum cuique tribuere is translated "literally as 'give to each what is his own', it would be nonsense, inasmuch as one cannot give to someone something that he already has".<sup>49</sup> This is a typical, classical-liberal view of justice which Locke could endorse. Locke's negative interpretation of suum cuique tribuere may not be obvious to some readers. But he holds that justice and injustice presuppose each man's own thing, or his property, or suum. This is why he says, "Where there is no Property, there is no Injustice" (Essay, IV, iii, 18), and raises the rhetorical question, "what justice is there where there is no personal property [?]" (ELN, VIII, 213).<sup>50</sup>

I shall produce more textual evidence to show that a just act, for

Locke, is an act of abstaining from another man's exclusive right or property. This act, as we shall also see, is opposed to positive acts of charity, bounty, and liberality. Let us focus on A Letter concerning Toleration where Locke contrasts "the narrow measures of bare justice" with such positive duties as "charity, bounty, and liberality" (Works, VI, 17). "Bare justice" demands the following: "No private person has any right in any manner to prejudice another person in his civil enjoyments .... All the rights ... that belong to him as a man ... are inviolably to be preserved to him. ... No violence nor injury is to be offered him ...." (Ibid.) Locke goes on to describe "the narrow measures of justice": "abstain from violence and rapine, and all manner of persecution" (VI, 21); "forbear violence, and abstain from all manner of ill usage towards those from whom they have received none" (VI, 22). What counts as "violence" in this context is an act of "invad[ing] the civil rights and worldly goods of each other" (VI, 20). The term "civil rights" used in A Letter concerning Toleration (VI, 20, 36, 40) is a synonym of (exclusive) "rights" or "property" of the Second Treatise. Hence, "bare justice" is to abstain from violating another man's property.

This bare justice is "narrow". So it is "not enough" for ecclesiastic men to practice this negative virtue. "He that pretends to be a successor of the apostles" "is obliged also to admonish his hearers of the duties of peace and good-will towards all men"; "and he ought industriously to exhort all men ... to charity, meekness, and toleration" (VI, 21). The use of force properly belongs to the magistrate, and every man must keep within the narrow measures of bare justice. But "charity, bounty, and liberality" must be added to our actions. "This the Gospel enjoyns, this reason directs, and this that

natural fellowship we are born into requires of us" (VI, 17). Of those positive virtues, "charity" is the most important Christian virtue for Locke. "[N]o man can be a Christian without charity, and without that faith which works, not by force, but by love" (VI, 6). "Charity" is "the spirit of the Gospel" (The Preface to The Reasonableness of Christianity, Works, VII, 3), and "the morality of the gospel" exceeds any other man-made morality including Ciceronian morality (Works, IV, 296). Another positive virtue — "liberality" or "bounty" — is, in Locke's view, not distinctively Christian. He is inclined to treat it as a heathen concept. Hence, in his work on education, Locke discusses "liberality" vis-à-vis "justice" in a distinctively Ciceronian manner (Works, IX, pp. 100f.). Locke says: Teach children "to part with what they have, easily and freely to their friends" on the one hand, and teach them "not" to "transgress" "the rules of justice" (or teach them to avoid injustice) on the other hand (ibid.).

Thus it is fairly clear that for Locke, a just act is an act of abstaining from another man's property. Justice is a negative virtue opposed to positive virtues of charity and liberality. A just act, then, is equivalent to one man's "preservation" of another's property. This preservation can be accomplished by the "force" of a law. On the other hand, the failure to practice charity or liberality (or bounty) cannot be punished legally. The contrast Locke draws between "justice" and "charity" is unmistakably sharp. But some recent commentators (e.g., John Dunn) have failed to grasp the opposition between "justice" and "charity". (For this, see CHAPTER 2, PART 2.) It is not amiss to stress here that Locke sharply contrasts "justice" with "charity". He refers to Hooker's "great Maxim of Justice and Charity" (ST, 5). In his discussion of "the just price", Locke distinguishes "what strict justice requires" from what "charity" requires.<sup>51</sup> And he mentions, in passing,

a rule of morality which prohibits injustice and recommends charity:  
 "Not to take from another what is his, though we want it our selves,  
 but on the contrary, relieve and supply his wants" (Essay, I, iii, 19).

So far, I have clarified Locke's concept of a man's just act in terms of another man's property, or his exclusive right of disposal, rather than a law. This simple Grotian approach to Locke enables us to translate his talk about the mutual preservation of property into a talk about justice. Men form a political society, for the purpose of acting justly with respect to their lives, liberties and possessions. Locke often expresses his concept of justice in a grammatically negative form. Nobody, he says, ought to commit injustice; or nobody "ought ... to meddle with what was already improved by another's Labour" (ST, 34). Having said this, however, I must now complicate my exposition of Locke's concept of a just act by bringing in the idea of a law.

A just act, according to Locke, is not only an act of abstaining from (i.e., preserving) another man's exclusive right. It is also an act of abiding by a law. Leaving aside the complex problem about the relationship of a law and a right, let us confirm that Locke tried to establish a close connection between a law and justice. Discussing "the just price" or the just act of selling a commodity, Locke remarks: "justice has but one measure for all men".<sup>52</sup> He repeats the idea of one universal measure ("all have one measure") in quoting Hooker's maxim of justice (ST, 5). We have already seen Locke's reference to the narrow "measures" of bare justice, and his use of phrases such as a "rule" of justice. Given his view that each man is "to govern himself by" a "Law" (ST, 63), it is not surprising that Locke treats a man's just act in relation to a law, or a universal measure for the regulation of actions. Indeed, he explicitly states that "justice" (or "righteousness")

means, according to the New Testament, a man's "perfect" or "exact" "obedience" to the "law" of God (The Reasonableness of Christianity, Works, VII, 5, 9, 10, 12, et passim). This "justice" is what Hobbes would call "the justice of men" as distinct from "the justice of actions" (Leviathan, XV, 206). To Locke, however, Hobbes' subtle distinction is not important. We can ascribe to him the view that a just act is an act of obeying a law.

If we are justified in ascribing this view to Locke, it seems that we need to settle the following question: Is a just act an act of abstaining from another man's property, or is it an act of obeying a law? But in fact, there is little point in settling this question. For a just act, according to Locke, can be defined either in terms of "property" or in terms of a "law". The important point is that a law prohibits one man from destroying, or damaging, or impairing the object of another man's exclusive right of disposal — another man's person (i.e., his life and liberty) or his possessions. This holds true of the law of nature as well as the law of a commonwealth. Given this, one man can abstain from another man's person or goods by obeying a law; or he can obey a law by abstaining from another man's person or goods. The law of nature, says Locke, teaches us not to "take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb or Goods of another" (ST, 6). It prevents us "from doing hurt to one another" (7); or it secures us "from injury and violence" (8). It is clear, then, that one man's abstention from another's person or goods goes hand in hand with his obedience to the law of nature. Similarly, the law of a commonwealth also prevents one man from injuring another, though each man has larger possessions in a political society than in the state of nature. Not every product of a legislature counts as



"a law". As Locke explicitly states:

Laws provide, as much as is possible, that the goods and health of subjects be not injured by the fraud and violence of others; they do not guard them from the negligence or ill-husbandry of the possessors themselves. No man can be forced to be rich or healthful whether he will or no (A Letter concerning Toleration, Works, VI, 23; emphasis added).

Given this negative function of the laws of a commonwealth, one man's abstention from another man's person or goods coincides with his obedience to the laws. Locke himself states that "the breach of laws" is "mostly the prejudice and diminution of another man's right" ("On the Difference between Civil and Ecclesiastical Power, Indorsed Excommunication", King, Life, II, 113). He also equates the punishment of those who "violate the laws of public justice and equity, established for the preservation of [men's rights]" with the punishment of those who "violate any other man's rights" (A Letter concerning Toleration, Works, VI, 10).

Thus, from a practical viewpoint, we may define Locke's "just act" either as an act of abstaining from another man's exclusive right, or as an obedience to the laws which preserve the objects of every man's exclusive right. The former definition is Grotian, while the latter might be regarded as Aristotelian.<sup>53</sup> At one point in the Essay, Locke also proposes a third definition of justice. "Justice", he suggests tentatively, might be defined as "such a treatment of the person or goods of another, as is according to Law" (III, xi, 9). If this definition is applicable to the justice of an agent, then a just act is an act of abstaining from the object of another man's exclusive right according to the law which protects every man's right. Locke's scattered remarks on justice are not helpful in settling the question whether a just act should be defined in terms of another man's rights or a universal law. I have suggested that there is little point in

trying to settle the question. However, the lack of a precise definition of "justice" is also a source of ambiguity. In Locke's account of appropriation (Chap. 5 of ST), there is no law which preserves every man's right (though there are laws or law-like measures which limit appropriation). So we are forced to interpret "justice" in Locke's account of appropriation as the non-violation of another man's property, rather than the non-violation of a law. But Locke offers no explanation as to why in his account of appropriation, a just act is not an obedience to a law which protects everyone's right. Thus we must be flexible and opportunistic in interpreting Locke's concept of justice. If there is a law which protects everyone's right (or its object), then we may define a just act in terms of a law or a right. And if there is no such law (as in the developmental state of nature of Chap. 5 of ST), then we should define a just act in terms of a right.<sup>54</sup> This flexibility, or looseness, is not mine but Locke's. How shall we treat this looseness? We shall treat the right-based concept of a just act as primary, and the law-based concept as secondary. This treatment can be justified on the ground that the right-based concept can be applied to the whole of Locke's political theory, whereas the law-based concept is not applicable to the whole. We shall then conclude that though a man's just act is an act of preserving another man's exclusive right, he can also perform this act by following a law if it is available and if it protects everyone's right (or its object).

## 2. 13 The Administration of Justice, or the Justice of a Spectator

The administration of justice means here a third party's prevention and correction of injustice among men. Locke discusses the administration of justice in the state of nature (Chap. 2 of ST), and

the administration of justice in the political state (Chap. 11 of ST). In the state of nature which lacks positive laws, impartial judges, and the collective force of men, every man has a power to execute the law of nature. He is a judge in his own case as well as in the case of other men. But this doctrine - "this strange Doctrine" - applies only to the state of nature. The administration of justice properly so called is possible only under civil government (ST, 13). This is Locke's view. Nevertheless, his comments on the (imperfect) administration of justice in the state of nature are useful for the purpose of clarifying Locke's concept of the administration of justice. In what follows, I shall make use of those comments to clarify his concept of the administration of justice in a political society.

In a sense, it is easy to state what the administration of justice is. The administration of justice is the administration of law. Every sensible commentator notes that "justice", in one sense of the term, is inseparable from "law".<sup>55</sup> Even though the concept of justice is a historically-evolved complex concept, it is easy to see the equivalence between "the administration of justice" and "the administration of law". Then we can affirm that in Locke's view, the administration of justice (or law) is a means to a further end. This end is the preservation of men's exclusive rights. Locke speaks of "the administration of Justice, for the securing of Mens Rights" (ST, 219). The "great end of Mens entering into Society" is "the enjoyment of their Properties in Peace and Safety", while "the great instrument and means of that" are "the Laws establish'd in that Society" (ST, 134). To repeat the banal truth about Locke's claim: "the administration of justice" is the administration of law, and its purpose is to preserve men's exclusive rights (or "properties").

It is equally true, however, that the purpose of the administration of justice can be stated as the maintenance of "justice". We can say that the administration of justice (or law) serves to maintain "justice", or the just state of affairs. Here we are not saying that the maintenance of law is the end of the administration of law. Given the complexity of the concept of justice, we cannot follow the simple-minded procedure of replacing every occurrence of the word "justice" by another word "law". What we are saying is that the maintenance of "justice", in the sense of the avoidance (i.e., prevention) and correction of injustice, is the end of the administration of law. Since "injustice" is the violation of one man's exclusive right by another man, this is simply a restatement of the view that the "preservation" of men's exclusive rights is the purpose of the administration of law. If we use the term "justice" to express the purpose of the administration of law, it signifies "the just state of affairs" in the sense of the not unjust (or injustice-free) state of affairs, or the state of affairs where men's exclusive rights are mutually preserved. Locke holds that the laws of a commonwealth, as well as the law of nature, prohibit mutual injury and injustice among men. Hence, the laws are the "great instrument" of preventing and correcting the violation of rights among men, or of "preserving" (or "securing") their rights. In other words, the laws are the great instrument to force men to perform "just acts", or to establish the just (i.e., not unjust) state of affairs. "Justice", on this view, is the absence or elimination of "injustice", and a law is the effective instrument to eliminate "injustice". Locke significantly remarks: "Common sense, as well as common justice, requires, that the remedies of laws and penalties should be directed against the evil that is to be removed, whatever it be found" (Works, VI, A Second Letter concerning

Toleration, 94; emphasis added). The just state of affairs is established negatively by the removal of injustice. This idea reappears in Locke's definition of "toleration". "Toleration" is nothing but "the removing that force" which men use "to convert" other men to "any religion" (ibid., p. 62).

We do not need to trouble ourselves with a verbal question whether "the administration of justice" is the administration of laws for the sake of eliminating injustice, or the elimination of injustice by means of laws. Locke himself tends to combine the formal elements of "justice" (impartiality, equality, regularity, and so on) with the purpose of the administration of laws. For instance, he says that the magistrate ought, "by the impartial execution of equal laws, to secure unto all people in general, and to every one of his subjects in particular, the just [i.e., violence-free] possession of" men's exclusive rights (Works, VI, 10). Here the negative interpretation of suum cuique tribuere is combined with the formal principle of treating like cases alike.

The administration of justice involves "punishment" and "reparation" (ST, 11). The two are distinct from each other, and Locke is aware of the distinction when he speaks of the "two distinct Rights, the one of Punishing the Crime for restraint, and preventing the like Offence ...; the other of taking reparation" (11). In the state of nature, everyone has the right to punish criminals. This right is also called the "Power to Execute" "the Law of Nature" (7-9). Punishment ought to be proportionate to the degree of a crime. Harm ought to be done to a criminal, only to "retribute to him, so far as calm reason and conscience dictates, what is proportionate to his Transgression" (8). To "retribute", or to give back what is his due, to "do justice".

"[I]t is just that he who has impaired another man's good should suffer the diminution of his own" (King, Life, II, "On the Difference between Civil and Ecclesiastical Power, Indorsed Excommunication", p. 113). The right to seek reparation, on the other hand, "belongs only to the injured party" (ST, 11); it is the right to "make satisfaction for the harm he has suffer'd" (10). Locke does not distinguish between "civil law" and "criminal law", but "reparation" belongs to the former whereas "punishment" belongs to the latter.

Locke holds that in the state of nature, every man has the right to punish criminals even if his right is not invaded. Every one can assist an innocent victim in "recovering from the Offender" what he has lost (10). Thus everyone in the state of nature does justice on everyone else, and seeks justice on behalf of everyone else. But men in the state of nature lack "an establish'd settled known Law", and "a known and indifferent Judge, with Authority to determine all differences according to the established Law", and the collective power to back the sentence of the judge (124-126). Men's passion, interests, revenges, etc. make the state of nature unsafe and intolerable, so they form a political society to seek the just treatment of their persons and goods.

As it is clear from this, Locke's political society is predominantly judicial. The state is "a high court". Aristotle long ago made the following remark on the concept of corrective justice: "The just as a corrective is ... a median between loss and gain. That is the reason why people have recourse to a judge when they are engaged in a dispute. To go to a judge means to go to the just".<sup>56</sup> Given this connection between corrective justice and a judge, it is not surprising that Locke's political society is predominantly judicial. I should like

to end my reconstructive analysis by clarifying his judicial concept of the state.

Who judges a controversy of rights? This is a very important question for Locke, and he gives different answers at different levels of his political theory. But his judicial concept of political society (and also of "the society" or "the community") is unmistakable. "Political society" is described as "a Judge on Earth, with Authority to determine all the Controversies, and redress the Injuries, that may happen to any Member of the Commonwealth; which Judge is the Legislative, or Magistrates appointed by it" (ST, 89; for similar statements, see 87, 88, 90, 91; 136; 19, 20, et passim). If a dispute arises between the legislative agent and the "people" (or the "society", or "the community"), then "the Body of the People" are "the proper Umpire" (24, 240, et passim). It is not at all important to Locke what branch of government authorized judges should belong to. The judiciary is not an independent branch of government. The legislative agent is not only a law-making agent, and but the supreme agent which can direct other powers of the commonwealth. If necessary, the legislative agent can function as a court. Locke says that the "Judge is the Legislative, or Magistrates appointed by it" (89). (Locke does maintain that "the Legislative and Executive Power come often to be separated (144), and assumes that judges work in the executive branch if the two powers are separated. But the legislative agent retains "a power ... to resume" "the Execution of the Laws" from those incompetent judges who do not administer justice properly. (153). What is important to Locke is not the separation of powers, but the subordination of powers.<sup>57)</sup>

Given the judicial concept of the state, its chief obligation

is to settle disputes among private citizens equally, impartially, and regularly. There should be "one Rule for Rich and Poor, for the Favourite at Court, and the Country man at Plough" (142). It seems that the idea of "our measure for all" (which I have noted earlier) has a closer connection with the justice of a spectator, than with the justice of an agent. The state's role in economic transactions, too, ought to embody the ideal of the equal standard for all. The silver content of coin is a case in point. "The standard once settled by public authority, the quantity of silver established under the several denominations ... should not be altered" unless such a change is absolutely necessary (Works, V, Further Considerations, 144). Public authority ought to guarantee "the performance of all legal contracts", but if the quantity of silver is altered, then it counts as "a public failure of justice" (ibid., 144f.). Such a change is likely to "give one man's right and possession to another" "arbitrarily" (for instance, a creditor receives less than "his due") without "any fault on the suffering man's side" (ibid., 145). "Whether the creditor be forced to receive less, or the debtor be forced to pay more than his contract, the damage and injury is the same, whenever a man is defrauded of his due" (ibid.). Thus the state ought to referee economic transactions to ensure no party suffers violence or fraud, by setting up a fixed standard. Currency laws, like the law of contracts (or sales and purchase), would count as what he calls the laws which "regulate" property (Sect. 1. 2 above). This "regulation" is designed to facilitate the smooth and equitable commercial transactions with minimal coercion.<sup>58</sup>

In economic transactions, as well as in non-economic transactions, the state ought to eliminate injury or injustice by enforcing one fixed universal law.<sup>59</sup>



I have analyzed Locke's concept of justice above. First, I have shown that it is the practical negation of injustice (Sect. 2. 11). Secondly, I have shown that a just act is an act of abstaining from, or preserving, another man's exclusive right (Sect. 2. 12). A just act also coincides with an act of obeying the universal law which prohibits mutual injury. Thirdly, I have shown that the administration of justice is the prevention and correction of injustice by the impartial execution of equal laws (Sect. 2. 13). Locke stated in the Essay that the idea of justice is a "complex" idea (III, xi, 9). Locke's idea of justice is also complex. But I hope that my analysis has made his complex idea less puzzling, and more intelligible.

## 2. 2 Other Bounds of the Supreme Power of the State

The supreme political agent, in Locke's view, has obligations other than the obligation to administer justice. In what follows I shall consider those other obligations, or other "bounds", of the supreme power. In Chap. 11 of the Second Treatise, Locke discusses three other obligations — the obligation to act for "the public good" (135, 142) or "the common good (131); the obligation to obtain "the Consent of the People" in raising tax. (142, 138-140); and the obligation not to transfer the law-making power to any other hand (without the consent of the people) (141-2). I shall discuss the first two obligations, and thereby complete an exposition of Locke's theory of the state.

### 2. 21 The Public Good — a General Slogan

Let me first quote Locke's own statements about the supreme political agent's obligation to act for "the public good" or the "common

good". He says:

"[T]he power of the Society, or Legislative constituted by them, can never be suppos'd to extend farther than the common good." (ST, 131).

The legislative power "in the utmost Bounds of it is limited to the publick good of the Society". (135).

"Laws also ought to be designed for no other end ultimately but the good of the People." (142).

These statements sufficiently indicate that the expression "the public good" or "the common good" is no more than a general slogan. The legislative agent, according to Locke, ought to act for the benefit of the whole community rather than a part of it. Locke speaks of "the good of the whole" (143), and "the good of the people" is the good of one collective body.

But Locke is not precise about what he means by "the public good". At one point, he explicitly identifies "the public good" with "the good of every particular Member of that Society, as far as by common Rules, it can be provided for" (FT, 92). If we take this identification seriously, then the public good is not the good of the whole society but the good of each particular member. But on the whole, Locke means by the "public good" the good of the whole society (of right-holders). Locke's loose talk about "the public good" has puzzled some commentators.<sup>60</sup> Above all, we should avoid two misunderstandings. First, Locke is not advocating the Benthamite principle of the greatest happiness of the greatest number. Secondly, he is not prepared to argue for the re-distribution of possessions on the ground of "the public good". Historically speaking, Locke is repeating the old slogan of constitutionalism. "The common good" is the general object of legislation (according to Aristotle); and it is the general goal toward which a law coordinates human actions (according to Hooker).<sup>61</sup> Locke also uses

a similar Ciceronian maxim of the spirit of the laws: "Salus Populi, Suprema Lex" (ST, 158).<sup>62</sup> The crucial point, however, is this.

Locke repeats the old slogan, yet he has already poured new wine into the old bottle. The new wine is his tripartite formula of property: men's "lives, liberties, and possessions". Under all normal circumstances, the legal protection of men's properties is compatible with, and is the basis of, the good of the people. Hence, for all practical purposes, what Locke means by "the public good" can be understood as the benefit of the whole society (or every member of it) which arises from the legal protection of men's rights. Locke nearly identifies "the public good" with "the preservation of the Society" (ST, 134-5). The latter idea is a negative idea of sustaining a violence-free society of right-holders. This is the basis of the public good.

The public good, or the preservation of the whole society, can conflict with the legal protection of everyone's right. "Many accidents may happen, wherein a strict and rigid observation of the Laws may do harm; (as not to pull down an innocent Man's House to stop the Fire, when the next is burning)" (159). In the extreme circumstance where the whole society faces imminent danger, a man's property may be taken and destroyed at the discretion of a public agent. This discretionary power, according to Locke, is the prerogative of an English monarch. (159ff.). Thus the public good can override each man's property, and the administration of justice, in the extreme circumstance. Locke's view can be best expressed in the words of Hume: "the strict laws of justice are suspended, in such a pressing emergence" (ENQ, 186).

Since "the public good" is a general slogan, it is not fruitful to discuss its meaning apart from a specific context. It is idle to

think that Locke had a certain Platonic entity in mind when he spoke of "the public good" or "the common good". "The public good", he says, is "the end of all laws" (165), as well as the end of all political activities. It is the spirit of the laws. But as we have already seen (in Sect. 2. 12, pp. 109-10 above), the law of nature and the laws of a commonwealth impose prohibitions and serve to prevent mutual injury. The public good, therefore, is something that results from the enforcement of the negative laws. In economic terms, the public good means the wealth of the whole nation. Locke indicates this in the following account of "the bounds of the legislative":

[The legislative agent ought to make provision] for the security of each man's private possessions; for the peace, riches, and public commodities of the whole people, and as much as possible, for the increase of their inward strength against foreign invasions (Works, VI, A Letter concerning Toleration, 42f.).

Thus Locke's view is that the administration of justice is (normally) compatible with the public good, and it is (normally) the basis of the public good.

## 2. 22 Taxation with the Consent of the Governed

Locke's claim against arbitrary taxation is the following:

The legislative agent "cannot take from any Man any part of his Property" (i.e., his possessions or estate), without "his own Consent, i.e., the Consent of the Majority, giving it either by themselves, or their Representatives chosen by them" (ST, 138-40). Locke holds that taxation is both necessary and appropriate for the support of government: "Governments cannot be supported without great Charges, and 'tis fit every one who enjoys his share of the Protection, should pay out of his Estate his proportion for the maintenance of it" (140). But

taxation is not legitimate without the "consent" of the governed, i.e., the consent of the majority of the people in the community, expressed either by themselves or their parliamentary representatives. Notice that Locke equates "his own Consent" (i.e., each individual man's consent) with "the Consent of the Majority" of the members of the community. Once a man incorporates himself into a community or a society, he is bound to be concluded by the will of the majority of the community. He must accept the judgements of the majority of the community as "his own Judgments" (88). This is why Locke identifies each individual man's consent with the consent of the majority. The "consent", in this context, means the agreement or approval of the majority, expressed either "by themselves" or by their parliamentary representatives.

Locke supports this claim in the following way. Since the chief end of men's entering into the society is the preservation of property, it logically follows that "the People should have Property" rather than lose property. But to say that I have property implies that "another [agent] can[not] by right take [it] from me, when he pleases, against my consent" (138). Therefore, those who have the supreme power in the community cannot take away my property as they think fit, without "my consent". Given the identity of my consent with the consent of the majority, it is possible to establish the claim that the legislative agent cannot take from me without the consent of the majority of my community. Thus Locke is not advancing an individual anarchist's claim. He states that the claim against arbitrary taxation is relevant only to a political society with a permanent legislature, or to a legislature with no representatives from the people (142).

Locke's claim against arbitrary taxation is primarily directed against a Hobbesian theory which allows the absolute sovereign "to dispose of the Estates of the Subject arbitrarily" (138). Like the claim about the state's obligation to administer justice, Locke's claim against arbitrary taxation rests on his claim about the purpose of men's entry into a political society. Hence, it rests on his account of pre-political appropriation.

I have reviewed the two obligations of the supreme political agent. This completes my exposition of Locke's theory of the bounds of the supreme power.

#### A Short Summary

In this chapter, I have offered a detailed exposition of the two major components of Locke's liberal political theory. I have explored even the most obscure regions of his thought, with the aid of historical references. But since my exposition is scholarly and detailed, it is appropriate to present a simple summary of what I have discussed. I shall not use my words to summarize what I have said. Instead, I shall let Locke speak for himself. There are three important passages he wrote. They hang together in a quasi-historical sequence. They clearly indicate the main points of his liberal political theory. First, he speaks about the origin of property; secondly, he speaks about the expansion of property in the age of commerce; and thirdly, he speaks about the administration of justice. Let me quote the

three passages:

- (1) "And thus, I think, it is very easy to conceive without any difficulty, how Labour could at first begin a title of Property in the common things of Nature, and how the spending it upon our uses bounded it." (ST, 51).
- (2) "[I]t is plain that Men have agreed to disproportionate and unequal Possession of the Earth, they having by a tacit and voluntary consent found out a way, how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus, Gold and Silver, which may be hoarded up without injury to any one." (ST, 50).
- (3) "[Those who hold the supreme power of a commonwealth] are to govern by promulgated establish'd Laws, not to be varied in particular Cases, but to have one Rule for Rich and Poor, for the Favourite at Court, and the Country Man at Plough." (ST, 142).

The commercial society of unequal possessions grew out of the primitive economy of labour and low consumption. Then the state's chief obligation is to eliminate injustice from the transaction of private men, by the impartial execution of equal laws.

This clear outline, however, has been obscured by recent scholars. In the following chapter, we shall see how recent scholars have understood — or misunderstood — Locke's liberalism.

## NOTES to CHAPTER 1

1. Patriarcha and Other Political Works of Sir Robert Filmer, ed. Peter Laslett (Oxford: Basil Blackwell, 1949), p. 71.
2. Locke uses the word "appropriate" or "appropriation" 14 times in 27 sections of Chapter 5. I shall list some examples of his use of the verb "appropriate":

"a means to appropriate them some way or other" (ST, 26).

"He that is nourished by the Acorns ... has certainly appropriated them to himself" (28).

"God ... gave Authority so far to appropriate" (35).

"Men had a Right to appropriate, by their Labour, each one to himself, as much of the things of Nature, as he could use" (37).

"[H]e who appropriates land to himself by his labour, does not lessen but increase the common stock of mankind" (37).

The last two examples unambiguously show that "to appropriate" means "to make (a thing) the private property of" someone; or "to make it over to him as his own"; or "to set apart" (OED, "appropriate", 1).

Locke combines the preposition "to" with the verb "appropriate". This usage seems to conform to a rather archaic use of the verb, "to assign, or attribute as properly pertaining to; to attribute specially or exclusively" (OED, "appropriate", 7). Locke uses the verb "appropriate" frequently, because it suits his purpose of showing how each man divides up the common world and makes the divided portion his property at the same time. To appropriate a portion of the world is to "make" "it" "his Property" (27), or "come to have" "a property" in it.

It must be noted, however, that his use of the word "appropriate" is loose just as his use of the word "property" is loose. The Indian who has eaten acorns has "certainly appropriated" them to himself (28). Here Locke wants to say that the Indian has made the acorns "his own", or a part of his body, or simply "his". To eat food and digest it, however, does not necessarily imply that a man comes to have an exclusive right of disposal (i.e., control) over that portion. If food is digested, then it is difficult to talk about having a right over a definite portion. At any rate, it is sufficient to note that the verb "to appropriate", in Locke's strict usage, means "to come to have a property in" a distinct portion of the world. See my related discussion of the loose images associated with the word "property", in CHAPTER 3. Locke's metaphor of "joining" and "annexing" seems to be connected with one meaning of "appropriate", i.e., "to allot, annex,



- or attach a thing to another as an appendage" (OED, "appropriate", 5, Obs.).
3. For a detailed discussion of the connection between jus and the 17th-century concept of "right", see my discussion in CHAPTER 3 (2. 21 A Right as a Species of Power: A Historical View). The history of the concept of a right which I have outlined in this paragraph is well known among historically sensitive philosophers. See, for instance, A. MacIntyre's comment on "rights" in After Virtue (Notre Dame, Indiana: University of Notre Dame Press, 1981), p. 67; or H. L. A. Hart's remarks on "rights" in "Bentham on Legal Rights", Oxford Essays in Jurisprudence, ed. A.W. B. Simpson (Oxford: The Clarendon Press, 1973); and so forth. The reader interested in my reference to Japan in this context should read the writings of Yukichi Fukuzawa, the leading figure in the Meiji Enlightenment of the 1870's. He discussed, from time to time, the difficulties of translating such modern Western ideas as "rights", "liberty", and "society".
  4. In his second Discourse, i.e., A Discourse on the Origin of Inequality, Rousseau says: "Let us begin then by laying all facts aside, as they do not affect the question". See The Social Contract and Discourses, trans. G. D. H. Cole (London: Dent, 1973), p. 45. In the opening paragraph of The Social Contract, he states: "Man is born free; and everywhere he is in chains. ... How did this change come about? I do not know. What can make it legitimate? That question I think I can answer". See Cole, trans. ibid., p. 156. In both statements, we see a clear distinction between the matter of fact and the matter of right.
  5. Read the celebrated is/ought passage of the Treatise carefully: "this ought, or ought not, expresses some new relation or affirmation, 'tis necessary that it shou'd be observ'd and explain'd" (THN, III, i, 1, 469). Hume's "conjectural history", which I have mentioned here, is his account of the origin of justice and property in THN, III, ii, 2. Anyone who has difficulty understanding Hume's view on "is" and "ought" should at least read MacIntyre, "Hume on 'Is' and 'Ought'", Hume: A Collection of Critical Essays, V. C. Chappell (Notre Dame: University of Notre Dame Press, 1968). But he should ignore most of the articles written on this subject.
  6. Leszek Kolakowski, Main Currents of Marxism, (Oxford: O. U. P., 1981), vol. 3, p. 298.
  7. C. B. Macpherson, The Political Theory of Possessive Individualism (Oxford: O. U. P. 1962), pp. 203 ff. and pp. 211ff.
  8. Cicero's Offices: De Officiis, Laelius, Cato Maior and Select Letters, intro. Thomas de Quincy, Everyman's Library (London: J. M. Dent & Sons, 1909), Bk I, Sect. X, p. 14.

9. This long note is devoted to a discussion of Locke's idea of injury (sine jure or without right).

Unlike Hobbes or Pufendorf who clarified the concept of "injury", Locke used the notion of "injury" without clarifying it. His use of the notion is informal and flexible. It is of little use to consult what the rigorous Hobbes said about "injury", or what the encyclopaedic Pufendorf said about it. The best way to understand Locke's notion is to take it informally. To "injure" a man is to "hurt" him. But we can clarify it further.

First, we should note that "injury", according to Locke, does not presuppose the existence of an exclusive right on the part of an injured party. A man can be said to be injured by another man even if he does not have an exclusive right, or "property". This is clear from Locke's account of appropriation. He tries to show that appropriators were able to avoid injuring non-appropriators or late appropriators. Non-appropriators and late appropriators do not have a "property in" external goods (i.e., they do not have an exclusive right of disposal over those goods). In the Essay, IV, iii, 18, Locke defines "injustice" as the "invasion or violation" of property (i.e., "a right to any thing"). But injustice is the violation of another man's exclusive right, whereas "injury" does not necessarily involve the violation of another man's exclusive right. Of course, we can say that if a man's exclusive right or property is violated by another man, then this violation causes injury or the first man receives an injury. Locke himself says, for instance, that whether the aggressor who "invades another Man's right [i.e., another man's exclusive right]" is a king or a villan, he can do equal "Injury" to another man (ST, 176). But "injury" is not identical with the violation of another man's exclusive right.

Let us confirm, positively, what Locke meant by "injury". He associates "injury" with "doing hurt" (ST, 7), or with "harm" (93), or "inconveniency" (91). When he says, "any number of men" may join one community "because it injures not the Freedom of the rest" (95), he seems to be associating "injury" with loss of freedom. This point becomes clear in Locke's account of appropriation. He says: in the "first Ages of the World", everyone was able to appropriate a piece of land by his own labour "without Injury to any Body", or "without prejudice to any Body", or "without straitning any body" (36). Since "any body" is a non-appropriator, or one who has not appropriated land yet, the word "injury" here cannot mean the violation of another man's property or his right in the strict sense of an exclusive right. The word "prejudice" here means "detriment", "damage", or causing "injury" (OED, "prejudice", 1). "Straiten" means "narrow or restrict the freedom, power, or privileges (of a person)" (OED, "straiten", 5). These dictionary meanings confirm that Locke operates on the sense of "injury" as harm or damage done to another man's freedom, or a serious restriction on

his freedom. Furthermore, Locke says in the same context that "it was impossible for any Man ... to intrench upon the right of another" (36). This statement contains the word "right", but this "right" is the "common right" another man had in the beginning of the world, rather than another man's exclusive right. The idea of the common right is basically that of free use and free access. So we can understand "injury" in this context as a serious restriction upon, or a damage to, another man's freedom or free access. We can apply the same consideration to another statement Locke makes about "injury" in Chap. 5: "No Body could think himself injur'd by the drinking of another Man, though he took a good Draught, who had a whole River of the same Water left him to quench his thirst" (33). According to Locke, nobody in the state of superabundance can possibly feel that his freedom to take water from the common river has been restricted or damaged by another earlier appropriator.

The considerations I have given above amply justify my claim that "injury", in Locke's view, primarily means a serious restriction upon, or a damage to, another man's freedom. If another man's exclusive right of disposal has been violated, then we can say that the holder of this right has been injured in the sense that he has been hurt, or his freedom has been seriously restricted. The core of Locke's concept of a man's exclusive right of disposal, or his property, is his liberty of disposal, or his freedom of disposal. So it is appropriate to think of an injury to the holder of an exclusive right as a serious restriction on, or a damage to, his freedom. For a detailed analysis of Locke's concept of an exclusive right of disposal, or property in the strict sense of the word, see my discussion in CHAPTER 3, PART 2.

Finally, I should like to mention one surprising fact. Most commentators have not even noticed Locke's subsidiary task in Chap. 5 of the Second Treatise was to show that appropriators were able to avoid causing injury to others. Perhaps, this neglect is due to the widespread polemical atmosphere created by C. B. Macpherson and Robert Nozick. Many commentators know Macpherson's contention about the "transcendence" of natural-law "limitations", or Nozick's "Lockean proviso", without having the slightest idea about what Locke was up to. Locke's subsidiary task in Chap. 5 is guided by his concern with the "minimum content" of any law, or his concern with (what some might call) "a core of good sense" — namely, the avoidance of injury. Whether he succeeds in this subsidiary task is another matter. But the avoidance of injury is the minimum spirit of any law. Karl Olivecrona's learned article, "Locke's Theory of Appropriation", The Philosophical Quarterly, Vol. 24, No. 96 (1974), makes mention of Locke's concern with the avoidance of injury. But this article is an exception in the whole Locke scholarship. Olivecrona is well acquainted with the 17th-century writings on the law of nature and natural rights. The rest of the commentators seem to be happy, even if they

do not see the point of the sufficiency limitation, i.e., the avoidance of injury. The reader interested in this happily ignorant attitude should take a look at Jeremy Waldron, "Enough and as Good Left for Others", Philosophical Quarterly, 29 (1979), pp. 319-28. Waldron devotes himself to the task of interpreting the point of Locke's "sufficiency limitation", and tries to save him from Macpherson and Nozick. Despite the serious tone in which he discusses the matter, he utterly fails to grasp the point of the so-called "sufficiency" limitation. To repeat, it is to enable appropriators to avoid injuring others.

10. My denial of the connecting link between Locke's assertions about "value" in the Second Treatise and the so-called "labour theory of value" should be taken in a qualified sense. We must understand that economists and historians of economic thought use the label "a labour theory of value" in a loose, flexible manner. If we mean by a "labour theory of value" the doctrine that labour is the sole, or primary, source of use-value, then Locke can be said to have a version of the "labour theory of value". But this is not the primary sense in which economists and historians use the expression "a labour theory of value". Usually, though not always, they mean by it a theory which explains the relationship between the relative value of one commodity to another and the quantity of labour which has gone into the production of each commodity (or commodities). A theory of this type purports to establish a unique relationship between the relative price of each commodity and the effort or time which the labourer(s) expended. Locke does not have a labour theory of value in this sense.

For Locke's relationship to different senses of "the labour theory of value", see Karen Vaughn, "John Locke and the Labor Theory of Value", Journal of Libertarian Studies, Vol. 2, No. 4, pp. 311-326. For Locke's theory of the determination of prices, see Karen Vaughn, John Locke: Economist and Social Scientist (Chicago: The University of Chicago Press, 1980), Ch. 2.

It might be thought that Locke's assertions about "value" in the Second Treatise amount to the following ethical claim rather than any claim of economics: each man has, or should have, a right to own the product of his labour because (or if) he has created almost the entire value of it. Though we may want to extract a claim of this sort from Locke, he certainly did not make this claim in the Second Treatise, sect. 40-43. Any literate person can understand what he wrote in those sections. To put it simply, it is this. Since the private appropriation of land by means of labour enables men to have agricultural products which sell at high prices, the private appropriation of land has proceeded rapidly and common land is growing small in comparison. Whatever else Locke says in sects. 40-43 is intended to illustrate or supplement this fundamental point.

11. Though Locke's references to the "regulation" of property are few, many commentators have discussed what he could have meant and what he did mean (without clearly distinguishing between the two). An interesting short history can be written about commentators' responses to Locke's remarks on the "regulation" of property. A few decades before Locke scholarship became an industry, Harold Laski referred to Locke's sentence, "In Governments, the Laws regulate the right of property, and the possession of land is determined by positive constitutions". Without clarifying what Locke meant, Laski made a critical comment: "[B]ut those laws, in their turn, men of property will shape". The Rise of European Liberalism (1936, rpt. London: George Allen & Unwin, 1971), p. 105. But since Macpherson wrote a contentious and critical appraisal of Locke, quite a few commentators have seized upon Locke's remarks on the "regulation" of property in order to turn him into a sensible Welfare-state liberal. Peter Laslett suggested that "redistributive taxation, perhaps nationalization could be justified on [Locke's] principles", in discussing what Locke could have meant by the "regulation" of property. See Laslett's Introduction to Two Treatises of Government (Cambridge: C. U. P., 1970), pp. 103ff. This was merely a suggestion or a hint, though it is certainly a false representation of Locke's view. But more recently, scholars have come up with wild interpretations and dressed them up in a scholarly language. I shall mention one conspicuous example here. In his supposedly scholarly book, James Tully explains Locke's view as follows: Once men form a political society, all "the possessions a man has in the state of nature, or shall acquire in his commonwealth, become the possessions of the community". The "distribution of property is now conventional and based upon man's agreement .... This is one of the major turning points in Locke's argument". A Discourse on Property (Cambridge: C. U. P., 1980), pp. 164f. Tully is mistaken.
- See my discussion of Tully on p. 196. Finally, I should like to mention Geraint Parry's sound account of Locke's remarks about the "regulation" of property. See Parry, John Locke (London: George Allen & Unwin, 1978), p. 117.

12. See my comments in note 11 above. Tully clearly turned Locke into the fool who willingly lost the fruit of his intellectual labour. I shall mention one scholar who assumed that Locke was a fool without explicitly turning him into a fool. Gordon Schochet, referring to Locke's sentence ("in Governments the Laws regulate the right of property ..."), makes the following comment: it is "difficult to reconcile this doctrine with the pre-political natural right to property". See Patriarchalism in Political Thought (New York: Basic Books, 1975), p. 253. But what is the nature of this difficulty? Schochet does not explain it to us. It is a difficulty for him because he does not grasp Locke's assumption that the regulation of the transfer of property should be minimal. Furthermore, the "natural right" of property, from the 17th-century viewpoint, is not inalienable. Locke says that men "give up" their natural power of disposal partially in order to "be regulated by the Laws made by the Society" (ST, 129). Hence, there is no theoretical difficulty for Locke. All he has to do is to make explicit his assumption that the "regulation" of property is minimal so that it is compatible with the preservation of property.
  
13. I am quoting from Lévi-Strauss' wonderful little book, Myth and Meaning (London: Routledge & Kegan Paul, 1978), pp. 44f. This book is based on Lévi-Strauss' CBC radio talk.
  
14. It is true of 17th-century general treatises on politics that each chapter of a treatise is devoted to a distinct topic (e.g., the state of nature, the origin of property, paternal power, the origin of political society, etc.). There is nothing unique about Locke's Two Treatises in this respect. However, Locke is excessively concerned about the limits of a discourse, and the limits of a segment of a discourse, when he writes. Consequently, when he writes a chapter, he tends not to refer to an earlier chapter of his book, or to a chapter which is to appear later. Furthermore, he has a tendency to use a new distinction for the purpose of solving a new problem within a particular segment of a discourse. He does not use the same distinctions throughout his discourse (e.g., his distinction between society and government). Unless we are aware of Locke's preoccupation with the bounds of a discourse (and its segments), and his habit of developing distinctions for a particular purpose at hand, we are likely to fool ourselves by launching premature criticism, or by calling him "inconsistent". For his preoccupation with the bounds of a

discourse, see my discussion in Appendix 2, III, (iii) (The Bounds of a Discourse).

15. Various expressions are used in the Declaration of Independence to describe "natural rights". See Carl Becker, The Declaration of Independence (New York: Vintage Books, 1922). Jefferson submitted a rough draft of the Declaration to Franklin, which contained the expression "rights inherent and inalienable" (*ibid.*, p. 142). Becker notes that there is no indication that the Congress changed "inalienable" to "unalienable". John Adams seems to have suggested a change from "inalienable" to "unalienable" in the course of printing (*ibid.*, p. 175, n. 1).
16. See Willmoore Kendall, John Locke and the Doctrine of Majority-Rule (Urbana, Illinois: University of Illinois Press, 1965), Chap. IV, entitled "The Doctrine of Inalienable Rights". Kendall wonders "how Locke ever got his reputation as a defender of the notion of 'inalienable' individual rights" (*ibid.*, p. 68). The word "inalienable", he says, "does not appear to be his" (*ibid.*). Kendall struggles to solve this puzzle in Chap. IV of his book, only to conclude that Locke's doctrine of "inalienable" rights is "inconsistent" with "the major emphases of his political theory" which are majoritarian and collectivist (*ibid.*, p. 74). Kendall thus twists Locke three times. Locke is a defender of "inalienable rights"; he is a majoritarian collectivist; hence, he is inconsistent. Kendall could have saved the whole trouble if he had not entertained the false notion that Locke's natural rights are "inalienable". Quite a few commentators seem to have a similar difficulty with Locke's "natural rights", though they do not express their puzzle as clearly and frankly as Kendall does.

The whole talk about "inalienable rights" is confused. Jefferson, Adams, and others were not interested in expressing the 17th-century concept of natural rights. Nor were they very philosophically acute. They only gave a popular expression to natural rights. W.D. Lamont has made a counter-proposal that "inalienable rights" is "a contradiction in terms". "Inalienable", if taken literally, means that "a person cannot voluntarily divest himself of a thing; but the essence of a right is that it can be used, unused, retained or abandoned at will. In short, by its very nature, it is alienable". Quoted from Lamont, Law and the Moral Order (Aberdeen: Aberdeen University Press, 1981), p. 51. Lamont also points out: "the idea of a non-forfeitable right to life is rejected in many, probably all, civilized societies" (*ibid.*). His position is in fact, close to the view of natural rights taken by Hobbes, Grotius, Pufendorf and Locke.

However, Lamont's remark that a right "by its very nature" is "alienable" is misleading. It misleadingly suggests that alienability rather than inalienability is the "nature" or "essence" of a right. But Hobbes — even Hobbes — says that "not all rights are alienable" (Leviathan, XIV, 192). What

is important is not whether a right is alienable or inalienable. The important issue for 17th-century theorists of natural rights is something else. It is this. The alienability or inalienability of rights is based on the operation of the will of an individual man. In Hobbe's case if a man's alienation of his right is not beneficial to himself, then he cannot consistently will to alienate it. In this sense, "not all rights are alienable" (ibid.). In Locke's case, if a man's will is bound by the will of God not to destroy himself (not to give up his life), then he may not and can not give up his right over his life. "Every one", Locke says, "is bound to preserve himself" (ST, 6). This statement means, at least in part, that the will of each man is causally determined by God to preserve himself, so that he is disabled to give up the object of his right. For this, see my critical discussion of Locke's account of the obligatory force of the law of nature in CHAPTER 3, 2. 22 (B).

17. For the relationship between "a right" and "a power", see my discussion in CHAPTER 3, especially, Sects. 2. 21 and 2. 22.
18. See Bentham, "Anarchical Fallacies"; and MacDonald, "Natural Rights". Both are included in Human Rights, ed. A. I. Melden (Belmont, Calif.: Wadsworth Publishing Co., 1970).
19. "Observations on Mr. Hobbes's Leviathan" in Patriarcha and Other Political Works of Sir Robert Filmer, ed. Peter Laslett (Oxford: Basil Blackwell, 1949), p. 239 & p. 248.
20. I shall quote Cicero's sentence here from Thomas Cockman's English translation, first published in 1699 and reproduced in Everyman's Library (op. cit. in note 8 above). Cicero says:

the chief end and aim of men's gathering into societies, and building of cities, [is] that each one might freely enjoy what is his right, without any danger or fear of being deprived of it (Bk. II, Sect. XXII, p. 108).

Locke says that men unite themselves into "commonwealths", rather than "cities". This is not surprising. In the Second Treatise, he states that "commonwealth" is a word for civitas, adding that the word like "Community" or "Citty [sic.]" is not quite appropriate as a translation (ST, 133).

We should not overrate Ciceronian influence on Locke. He is not as Roman as Grotius, Pufendorf, or Hume. However, Locke holds that Cicero's De Officiis is the best work on morality produced by "human reason" in "the heathen world". See his remarks on De Officiis in Works, III, 296; IX, 176; and X, 306. (The Bible, of course, is the "best book" on morality in an unqualified sense. Cicero's work is the best of all pagan works.)

Pufendorf also quotes a similar passage from Cicero's



De Officiis (Bk II, Sect. XXI), in De Jure Naturae et Gentium (8. 5. 2). Pufendorf quotes Cicero in the section entitled "Citizens do not everywhere owe dominion of their possessions to the state" (8. 5. 2). In the previous section, he quotes Hobbes' remark on the seventh doctrine against government (8. 5. 1). Thus we can conjecture that Locke read Cicero and Pufendorf to write Sect. 124 of the Second Treatise. Also, though there is no evidence to suggest that Locke read De Cive, he knew Hobbes' comment on the seventh doctrine from Pufendorf's De Jure Naturae et Gentium (8. 5. 1).

21. For the Lawson's distinction and its possible connection with Locke, see Julian H. Franklin, John Locke and the Theory of Sovereignty (Cambridge: C. U. P., 1978), Chapters 3 and 4. I am not prepared to accept Franklin's thesis about the significance of Lawson's "influence" on Locke. But he shows that the distinction between "community" and "government" was important for those who tried to justify the people's right of resistance.
22. See Kendall, op. cit., Chaps. III, VI, VII, for his view of Locke as the "collectivist" or "the majority-rule democrat". His approach to political philosophy is uncompromisingly crude. For instance, he refers to Locke's definition of "political power" (ST, 3), and says the following: it is "so authoritarian and collectivist in its bearing that no genuine individualist (e.g., Rousseau) could conceivably accept" (Kendall, op. cit. p. 60). The words like "authoritarian", "collectivist", "individualist", and even "Rousseau" are used as mere labels. Kendall's book, which first appeared in 1941 as a monograph, exerted pernicious influence on later scholars and commentators. It made them forget (!) the A B C of constitutionalism. It turned Locke into a defender of the arbitrary will of the majority.

Macpherson inherits Kendall's discourse on Locke's collectivism, and multiplies nonsensical claims about the relationship between "collectivism" and "individualism". Locke's "individualism", says Macpherson, is "necessarily collectivism (in the sense of asserting the supremacy of civil society over every individual)" (Macpherson, op. cit., p. 255). "Locke had no hesitation in allowing individuals to hand over to civil society all their natural rights and powers including specifically all their possessions and land" (ibid., p. 256). "Locke's individualism, ... does not exclude but on the contrary demands the supremacy of the state over the individual" (ibid.). "It was necessary and possible) for him to develop limitations on government because he had first constructed the other part, i.e., the total subordination of the individual to civil society" (ibid., p. 258). Does Macpherson intend to justify his right to accumulate an unlimited number of errors? Is he trying to free scholarship from traditional, or social, or natural-law obligations? I do not intend to examine his errors in detail. In the text I provide the correct account of Locke's use of the idea of a collective society, and its

relationship to individual men's rights and positive laws. Let us note that "civil society", in Locke's usage, is equivalent to "political society" (ST, Chap. 7, "Of Political or Civil Society"). Macpherson fails to note two basic points. First, a "political or civil society" is a "society" (or a "community" or a "commonwealth") under government. Secondly, the form of government (i.e., the location of the legislative power within the society) is determined by the will of the majority of the society (or the community, or the commonwealth, or the people).

23. For Pufendorf's account of the generation of a civil state, see his De Jure Naturae et Gentium, Bk 7, Ch. 2, Sects. 1-8. His account is a critique of Hobbes'. He explicitly rejects Hobbes' procedure of generating a commonwealth by a single pact (7, 2, 9-12). According to Pufendorf, two pacts or covenants are required to generate a civil state (or civitas). First, men in the state of nature "covenant each with each in particular, to join into one lasting Society, and to concert the Measures of their Welfare and Safety, by the publick Vote" (De Jure Naturae [B], 7, 2, 7). Secondly, after a decree has passed among the members of this "lasting society" about the particular form of government, a second covenant is made between the ruler and the ruled (7, 2, 8).

Pufendorf takes over from Hobbes the idea that a commonwealth is an artificial man, and develops it into a complicated doctrine of "a compound moral person". Pufendorf offers his definition of a civil state, imitating Hobbes' "very ingenious" definition of a commonwealth as an artificial man. A civil state, says Pufendorf, is "a Compound Moral Person, whose Will, united and tied together by those Covenants which before pass'd among the Multitude, is deem'd the Will of all; to the end, that it may use and apply the Strength and Riches of private Persons towards maintaining the common Peace and Security" (De Jure Naturae [B], 7, 2, 13).

Apart from the two-covenant doctrine Pufendorf adopts, his account of the generation of a moral compound person derives a great deal from Hobbes' account of the union of wills in De Cive. For instance, he says: "The only Method ... by which many Wills may be conceiv'd as join'd together, is ... that each member of the Society submit his Will to the Will of one Person, or of one Council" (7, 2, 5). One compound person, he also says, is the collective agent "to which one general Act may be ascribed, and to which certain Rights belong, as 'tis opposed to particular Members" (7, 2, 6).

We can find in Locke traces of Pufendorf's view that a civil state, and its rudimentary society, are compound entities. But as is often the case with Locke, he simplifies subtle distinctions. He prefers to think, metaphorically, that a society is one body which must move this way or that way (ST, 96). Locke attenuates Hobbes' and Pufendorf's talk about the union of wills and powers because a social union, in his view, begins more freely and easily.

For the historical significance of Pufendorf's doctrine of "a compound moral person", see Otto Gierke's discussion in Natural Law and the Theory of Society 1500 to 1800, trans. & intro. Ernest Barker (Cambridge: C. U. P., 1934), vol. 1, pp. 118ff. Gierke surveys how the concept of group-personality developed within the individualistic framework of modern theories of natural rights. Pufendorf was able to "drive firmly home the principle that the corporate person must be conceived as a 'subject' of rights, which willed and acted with the same unitary quality as a single person" (*ibid.*, p. 120). Gierke rightly points out that Locke "marks but little advance" in providing an account of collective personality (*ibid.*, p. 128).

24. Locke uses the term "revolution" in the 17th-century sense of the "revolving back" to the previous or the original constitution. It is a "restoration", implying a return to the original constitutional order. Many "revolutions" in England, says Locke, have "brought us back again to our old Legislative of King, Lords, and Commons" (ST, 223). We must understand the sense of the Glorious "Revolution" of 1688, in terms of a restoration of basic constitutional forms. Locke refers to William III as the "Great Restorer" in the Preface to the Two Treatises (rather than as the "Great Revolutionary"). For this older sense of "revolution", see G. Parry's discussion in John Locke (London: George Allen and Unwin), pp. 141. Also H. Arendt, On Revolution (New York: The Viking Press, 1965), Chap. 1.
25. Since Locke states this minimal right very briefly in ST, Chap. 2, many commentators usually ignore this right. Let us confirm what Locke says. First, all men have freedom to "order their Actions and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature" (ST, 4). This statement can be rendered as follows: all men have "rights" to dispose of their lives, liberties (or actions), and possessions. ("Possessions" here are presumed to be minimal). Secondly, "no one ought to harm another in his Life, Health, Liberty, or Possessions" (ST, 6). Since everyone has "rights" over these minimal objects, and nobody ought to take them away or destroy or harm them, everyone can be said to have exclusive rights of disposal over these minimal objects. In short, everyone's minimal objects can be called his minimal "property".
26. The sentence "Every man has a property in his (own) person" is equivalent to another sentence, "Every man's life and liberty are his property". For this equivalence, see my discussion in CHAPTER 3, especially, PART 1, 1. 21 and 1. 22.
27. For Stewart's account of conjectural history, see his "Account of the Life and Writings of Adam Smith", included in Adam Smith: Essays on Philosophical Subjects, ed. W.P.D. Wightman, J.C. Bryce & I.S. Ross (Oxford: O.U.P., 1980), pp. 292ff.

28. Marx's remark on Ricardo and Smith can be applied to Locke as well: "The individual and isolated hunter and fisherman, with whom Smith and Ricardo begin, belongs among the unimaginative conceits of the eighteenth-century Robinsonades". Grundrisse, trans. M. Nicolaus, (Harmondsworth: Penguin Books, 1973), p. 83.
29. J.S. Mill states: "justice, like many other moral attributes, is best defined by its opposite" (Utilitarianism, Chap. V). See Utilitarianism, On Liberty, and Considerations on Representative Government, ed. H.B. Acton (London: J.M. Dent & Sons, 1972), p. 39. John Stuart Mill is, in fact, just one of the many theorists who have tried to clarify the concept of justice by its opposite. For an extensive list of theorists who have taken the indirect approach to justice, see F. Hayek, Law, Legislation and Liberty, 2nd volume, Chap. 8, note 9, pp. 162-4.
30. G.W. Leibniz, New Essays on Human Understanding, abridged ed., trans. P. Remnant & J. Bennett (Cambridge: C.U.P., 1982), p. 384.
31. John Finnis rightly points out that "other-directedness" is one of the main ingredients of the complex concept of justice. He also suggests that "doing ourselves justice", and Plato's concept of justice, are metaphorical extensions. See his Natural Law and Natural Rights (Oxford: O.U.P., 1980), p. 161f.
32. The distinction between the "agent" and the "spectator" derives from Hume's discussion of liberty and necessity (THN, 408; and ENQ, 94, n. 1).
33. Cicero's Offices: De Officiis, Laelius, Cato Maior and Select Letters, intro. Thomas de Quincy (London: J.M. Dent & Sons, 1909), p. 8.
34. Ibid., p. 10.
35. Ibid., p. 105.
36. Ibid., p. 10.
37. Barbeyrac states: Grotius "ought to be regarded as the first who broke the Ice" in the systematic treatment of the law of nature. See An Historical and Critical Account of the SCIENCE of MORALITY (prefixed to the 4th English edition of Pufendorf's Of the Law of Nature and Nations), Sect., XXIX, p. 79. Smith follows Barbeyrac in judging Grotius' work: "Grotius seems to have been the first who attempted to give the world any thing like a regular system of natural jurisprudence" (LJ, (A), 1; also TMS, VII, iv, 37). Sidgwick calls Grotius' De Jure Belli ac Pacis "the epoch-making work" in his Outlines of the History of Ethics (London: Macmillan, 1919), p. 160.
38. Francis Kelsey's English translation of De Jure Belli ac Pacis makes Grotius' discussion of the word jus totally unintelligible. For this reason, I am quoting from William Evats' 17th-century translation. Kelsey's translation obscures Grotius' simple point

that jus has three senses. According to Grotius, jus means: (1) "that which is just" in the "negative" sense of "not unjust" (De Jure Belli, 1, 1, 3); (2) a moral quality, perfect or imperfect (1, 1, 4); and (3) lex, or law, or "a rule to Moral Actions, obliging us to do which is right" (1, 1, 9). The second sense of jus is what is called a "right" in English.

39. Grotius does not take the trouble to elaborate the distinction between perfect and imperfect rights. But Pufendorf's encyclopaedia, De Jure Naturae et Gentium, clarifies the distinction. See De Jure Naturae et Gentium, 1, 1, 19; 1, 7, 7; and 1, 7, 11. Hutcheson takes over the distinction from Pufendorf, and transmits it to Adam Smith. See LJ (A), i, 14.

40. My account of Grotius' nomenclature "expletive justice" follows Pufendorf's. Pufendorf clarifies the idea of the just filling of an empty space:

What is owed me by a perfect right is in a sense conceived to be already my own, and hence, so long as it is not furnished me, I may be said to be lacking something of my own. ... If, therefore, I receive something due me by virtue of a perfect right, I get nothing new, but only a thing is supplied which was lacking, and whose place was being filled in the meantime by an action. For example, a man who has borrowed a book from my library does not add to my library when he returns it, but only fills a place that was empty. (De Jure Naturae [A], 1, 7, 11.)

41. Aristotle, Nichomachean Ethics, 1132a, trans. Martin Ostwald (Indianapolis: Bobbs-Merrill, 1962), p. 121.

42. Pufendorf's discussion of the concept of justice is academic, and it is more faithful to Aristotle than to Cicero. He is fully aware of the complexity of the concept of justice. He prefers to retain the Aristotelian division of justice (universal vs. partial, and distributive vs. corrective), without subscribing to or developing Grotius' narrow concept of justice. He even criticizes Grotius' division of justice, and his misrepresentation of Aristotle's discussion of justice (De Jure Naturae, 1, 7, 9-12).

Pufendorf's disagreement with Grotius' discussion of justice, however, is more apparent than real. Though Pufendorf refuses to restrict the use of the words "justice" and "injustice" in the manner of Grotius, he firmly holds the Ciceronian view that the most important mutual duty of men is the duty of avoiding "injury" or "harm" to other men (3, 1, 1-2). Pufendorf does not call this duty the duty of "justice", though he takes it to be the most important mutual duty. "Injury", according to him, is to be defined in terms of the violation of another man's perfect right (1, 7, 15). Thus Pufendorf's discussion of "injury" and the avoidance of "injury" is Ciceronian and Grotian, whereas his discussion of "justice" and "injustice" is close to Aristotle's.

43. J.L. Mackie, Hume's Moral Theory (London: Routledge & Kegan Paul, 1980). J. Harrison, Hume's Theory of Justice (Oxford: Oxford

University Press, 1981). These two books are, of course, more "philosophical" than scholarly. Mackie and Harrison concentrate on Hume's "arguments", without giving due consideration to his historical background. Unfortunately, their ahistorical approach prevents them from putting Hume's arguments in a proper perspective.

44. D. Forbes, Hume's Philosophical Politics (Cambridge: C.U.P., 1978). K. Haakonssen, The Science of a Legislator: The Natural Jurisprudence of David Hume and Adam Smith (Cambridge: C.U.P., 1981). These two books are more "scholarly" than philosophical. Forbes and Haakonssen concentrate on Hume's historical background, without giving due consideration to his arguments. Unfortunately their historical approach prevents them from understanding, or examining, the details of his arguments. Thus Duncan Forbes drops many names — including Grotius — in discussing the historical background of Hume's theory of justice, without sufficiently clarifying the connection between Hume and Grotius. See Forbes, op. cit., chaps. 1 and 2; and compare his loose remarks on Hume and Grotius with my precise remarks about them. Also, see note 48 below.
45. For Aquinas' introduction of the term "commutative justice", see John Finnis, Natural Law and Natural Rights (Oxford: O.U.P., 1980), p. 179. Adam Smith also says that "commutative justice" is the nomenclature of "Aristotle and the schoolmen". He carefully adds "and the schoolmen" to offer a historically accurate description. It goes without saying that modern theorists often tried to use the label "commutative justice" in a more narrow way — as the justice which pertains to the exchange of commodities, or "the justice of a Contractor" (Hobbes, Leviathan, Ch. XV, 208).
46. Aristotle, Nicomachean Ethics, 1130b, trans. Martin Ostwald (Indianapolis: Bobbs-Merrill, 1962), p. 117.
47. Hume, THN, 504, n. 1: "most of the rules, which determine property ... are principally fix'd by the imagination, or the more frivolous properties of our thought and conception". For Hume, the most important rule is the rule concerning the stability of possessions (i.e., the abstention from another's possessions). This rule must be distinguished from the rules which assign particular objects to particular persons. He says: "we must ever distinguish between the necessity of a separation and constancy in men's possession, and the rules, which assign particular objects to particular persons. The first necessity is obvious, strong and invincible: the latter may depend on a public utility more light and frivolous, on the sentiment of private humanity and aversion to private hardship, on positive laws, on precedents, analogies, and very fine connexions and turns of the imagination". (ENQ, 310, n.)
48. Without complicating the matter very much, I should like to state that Hume rejects the view that justice presupposes each man's "own" object prior to public interactions. A just act in the strict sense is an act of abstaining from another man's possessions, rather than his property; and each man's "property" arises when

each man in a given society regularly practices the virtue of "justice". "Property", therefore, does not exist independently of the virtue of "justice". This is, above all, Hume's critique of Grotius. It is also an implicit criticism of a part of Hobbes, and Locke. See THN, 491 ("Those ... who make use of the word property" without explaining the origin of justice "are guilty of a very great fallacy"); and 526f. where Hume rejects Ulpian's maxim of justice. Grotius, Hobbes, and Locke accept Ulpian's maxim as unproblematical. (Not a single scholar, nor a philosopher, has discussed Hume's critique of Grotius in a clear-headed manner. D. Forbes only dimly sees the Grotius-Hume connection. I shall publish an article on Grotius and Hume in the near future.)

49. Kant, The Metaphysical Elements of Justice, trans. John Ladd (Indianapolis: Bobbs-Merrill, 1965), p. 43. Kant is not commenting on Locke. He is providing his own interpretation of Ulpian's formula in this context, without intending to capture Ulpian's original meaning. Kant's own translation of suum cuique tribuere goes as follows: "Enter into a condition under which what is his own is guaranteed to each person against everyone else" (ibid.).
50. Historically speaking, Hobbes rather than Locke is the first English speaking theorist who stated the view that "where there is no property, there is no injustice". Hobbes explicitly derives this view from Ulpian's maxim of justice; or what he calls "the ordinary definition of Justice in the Schooles" which is a variant of Cicero's suum cuique tribuere. In Leviathan (XV, 202), Hobbes refers to this definition: "Justice is the constant Will of giving to every man his own". "[T]herefore", says Hobbes, "where there is no Own, that is no Propriety, there is no Injustice". Also, see De Cive, the Epistle Dedicatory.  
  
Locke read Leviathan, though perhaps not very carefully. Whether he obtained a clue from Hobbes or not, his "moral" proposition - "Where there is no property, there is no injustice" - rests on his prior acceptance of Cicero's, or Ulpian's, maxim of justice. (Cf. my remark on Hume's attack on Ulpian's maxim in note 48 above.)
51. See "Venditio. 95", Political Studies, Vol. XVI, No. 1 (1968), pp. 84-87. Locke sharply distinguishes between "charity" and "strict justice" (in sales); between acting "against Justice" and acting "against Charity"; or between "the common rule of traffic" and "the common rule of charity". See ibid., pp. 85f.
52. "Venditio. 95", ibid., p. 85. Locke's point is that justice in commercial exchange abolishes the difference between the rich and the poor. The just price is "the market price at the place where [a man] sells" (ibid., p. 84), and this serves as one measure for all buyers. Locke states:

[Justice] requires that we should sell to all buyers at the market price for if it be unjust to sell it to a poor

man at 10/- per bushel it is also unjust to sell it to the rich man at 10/- per bushel, for justice has but one measure for all men. (Ibid., p. 85.)

53. My use of the adjective "Aristotelian" here is somewhat arbitrary. But I use it because Aristotle did emphasize the conceptual link between "justice" and "law". See Nichomachean Ethics, 1129b, 1130b, and especially, 1134a. In discussing the "what is just in the political sense", Aristotle remarks:

The just in political matters is found among men who share a common life in order that their association bring them self-sufficiency, and who are free and equal, either proportionately or arithmetically. ... the just exists only among men whose mutual relationship is regulated by law, and law exists where injustice may occur. (Ibid., 1134a; Martin Ostwald's translation, p. 129.)

Locke, of course, read Aristotle's Nichomachean Ethics. His explicit reference to Aristotle's comment on (natural & legal) justice can be found in the first essay on the law of nature (ELN, I, 113). Aristotle's constitutionalism in his science of politics also gets transmitted to Locke via Hooker.

54. The "law" which concerns us in this context is the law which protects the objects each man already has as his "own", or as the objects of his exclusive right of disposal. In Chap. 5 of the Second Treatise, Locke does not discuss a law of this kind though he uses the expression the "Law of Nature". He says: "The same Law of Nature, that does by this means give us Property, does also bound that Property too" (ST, 31). He also speaks of "this original Law of Nature for the beginning of Property" (30). Or he says: the "Law Man was under, was ... for appropriating" (35). However, Locke's references to the "law" ("rule" or "measure") in Chap. 5 concern the mode of appropriation, or how they acquire external objects as the objects of their exclusive rights. The "law" (or "rule" or "measure") in Chap. 5 is not the law which preserves what each man already has as his own. Locke's use of the phrase "the law of nature" is informal in Chap. 5, but what I have stated above is quite clear.
55. Henry Sidgwick, being fully aware of the tremendously difficult task of defining "justice", begins his analysis as follows:

Perhaps the first point that strikes us when we reflect upon our notion of Justice is its connexion with Law. There is no doubt that just conduct is to a great extent determined by Law, and in certain applications the two terms seem interchangeable. Thus we speak indifferently of 'Law Courts' and 'Courts of Justice', and when a private citizen demands Justice, or his just rights, he commonly means to demand that Law should be carried into effect. (The Methods of Ethics, 6th ed. (London: Macmillan, 1901), p. 265.)



D. D. Raphael begins his analysis of the complex concept of justice in a similar way. He observes:

The term 'justice' is used both of law and morals. In the law, justice covers the whole field of the principles laid down, the decisions reached in accordance with them, and the procedures whereby the principles are applied to individual cases. The system of law is justice in the legal sense of the term. ("Conservative and Prosthetic Justice", Ch. 5, Justice and Liberty (London: The Athlone Press, 1980), p. 74.)

Commentators who concentrate on the question of "social justice" or "distributive justice" sometimes fail to note the close connection between "justice" and "law".

56. Nichomachean Ethics, 1132a, Ostwald trans., pp. 121f.
57. This simple point is almost entirely neglected in standard commentaries on Locke. Chap. 13 of the Second Treatise is titled "Of the Subordination of the Powers of the Commonwealth" (emphasis mine). The legislative power is also described as "that which has a right to direct how the Force of the Commonwealth" (143). What is usually known as Locke's doctrine of "the separation of powers" should be re-designated as Locke's doctrine of the subordination of powers. Here Locke's basic idea is not "check and balance", but one agent's directing the power of another agent.
58. Locke's scattered remarks about the "regulation" of property, and justice in commercial transactions, can be subsumed under what Hobbes (and his followers) call "commutative justice". Hobbes rephrases it as "the Justice of a Contractor" (Leviathan, XV, 208). He uses the nomenclature "commutative justice" to designate the justice which concerns buying and selling, lending and borrowing etc.

To avoid confusion, we must note that Hobbes' "commutative justice" is quite different from Aquinas' or Smith's. Their concept of "commutative justice" is flexible, and it concerns not only commercial transactions but all transactions among private men. Aristotle's "corrective justice" may be slightly less flexible than their concept of "commutative justice", because of its emphasis on "correction". But just like Aquinas' or Smith's concept of "commutative justice", it pertains to all types of transactions or "dealings" (synallagmata) including murder, insult, and defamation. In order to clarify Locke's overall concept of justice, we must stick to their broader concept of "corrective" (or "commutative") justice. I have referred to Hobbes in this note only because his commercial concept of commutative justice clarifies the point of Locke's scattered remarks on justice in commercial transactions.

59. Presumably, Locke would have to modify his definition of injustice, if he were to accommodate the view that it is unjust to break a contract.

Instead of defining injustice strictly as one man's violation of another's exclusive right (or "property"), he would have to say that the breach of a contract involves the violation of the right which another would receive if the contract were kept. But if he holds this position, the breach of a contract does not amount to the violation of another man's exclusive right. Rather, it is the violation of another man's due.

60. In his book, Politics and the Public Interest in the Seventeenth Century (London: Routledge & Kegan Paul, 1969), J. A. W. Gunn discusses Locke's concept of "the common good". He also comments on other interpreters' views of what Locke meant by "the public good". Gunn himself suggests that we gain very little by examining Locke's concept of "the public good". See op. cit., pp. 291ff.
61. For Aristotle's view, see Politics, 1283b & 1278b. Also see Ernest Barker's note to 1283b in his translation, The Politics of Aristotle (Oxford: O. U. P., 1946). As for Hooker, Locke quotes his view on the relationship between laws and the common good in ST, 135n.; cf. Locke's own statements on the function of laws in ST, 57 & 219.
62. Locke states: "Salus Populi, Suprema Lex" (ST, 158). This quotation was commonplace in 17th-century writings. But see Pufendorf, De Officio Hominis et Civis, 2, 11, 3: "The general law of rulers is this: the welfare of the people is the supreme law". Pufendorf refers to Cicero's De Legibus here.

## **CHAPTER 2**

### **LOCKE AND MODERN ILLITERATES:**

#### **A Critique of Recent Interpretations**

## CHAPTER 2

### LOCKE AND MODERN ILLITERATES:

#### A Critique of Recent Interpretations

"Nevertheless, this artificial Ignorance, and learned Gibberish, prevailed mightily in these last Ages, by the Interest and Artifice of those, who found no easier way to that pitch of Authority and Dominion they have attained, than by amusing the Men of Business, and Ignorant, with hard Words, or Implying the Ingenious and Idle in Intricate Disputes, about unintelligible Terms, and holding them perpetually entangled in that endless Labyrinth." (Essay, III, x, 9.)

"[W]ith great Art and Subtlety they did no more but perplex and confound the signification of Words, and thereby render Language less useful, than the real Defects of it had made it, a Gift, which the illiterate had not attained to." (Ibid., III, x, 10.)

"[I]t appears in all History, that these profound Doctors were no wiser, nor more useful than their Neighbours; and brought but small Advantage to humane Life, or the Societies, wherein they lived." (Ibid., III, x, 8.)

This chapter is polemical.<sup>x</sup> I shall criticize recent interpretations of Locke's liberal political theory, and condemn those who have provided ill-conceived interpretations. I shall not criticize all recent interpretations. But I shall criticize all major interpretations which count as alternatives to my own exposition, or my "objective" interpretation, of Locke's liberalism. Only a few commentators have made sensible remarks on Locke's political theory over the past few decades. The majority of recent commentators are quite unreasonable. In this chapter, I shall be using my polemical skill against that unreasonable majority. If my criticism is successful, it will overthrow all major alternatives to my exposition of Locke's liberal political theory. Then it will establish, beyond any reasonable doubt, the authenticity of the exposition of Locke's liberal

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\*I use the word "illiterate" in this chapter. This is not intended to be a term of abuse. It is a descriptive term for someone who cannot read a text (for one reason or another).

political theory which I have offered in CHAPTER 1.

The structure of this chapter corresponds to that of the previous chapter. This chapter consists of two parts. In PART 1, I shall criticize recent interpretations of Locke's account of appropriation. Though I shall discuss various interpretations (including one "popular" view), my main targets are Macpherson's interpretation, and Laslett's. These two interpretations are scholarly and influential. I shall devote the largest space to them. I shall show, once and for all, that they are near-illiterates who cannot satisfactorily read Locke's plain English. There are other minor targets I shall attack. They are either near-illiterates like Macpherson and Laslett, or the complete illiterates of an academic kind. In PART 2, I shall criticize some recent, alternative interpretations of Locke's concept of justice. There are only a few alternative interpretations, and I shall briefly reject them. Thus PART 2 is much shorter than PART 1.

In the present chapter, I shall condemn the low standards of recent Locke scholars. Unlike the previous chapter which is largely expository, the following pages contain some openly condemnatory remarks. Every polemical writing is, and ought to be, offensive. My polemics will be offensive to those recent commentators who are on the wrong track, or to those readers who sympathize with them. Nevertheless, my purpose is not to abuse or ridicule any recent scholar. It is to reject main alternatives to my own exposition of Locke's liberalism on intellectual grounds. I shall try to keep my condemnatory remarks to the minimum. They are at any rate based on a meticulous study of the vast secondary literature on Locke, and a close reading of his own works. To soften my condemnatory tone and activate my intellect, I have occasionally resorted to the strategy of mixing frivolity with the most rigorous argument. The

truly intelligent reader will, I hope, appreciate my frivolity.

I have written this chapter in the conviction that the mainstream of Locke scholarship is so confused that we can no longer trust the authority of our leading Locke scholars. (Here I am speaking of those scholars who have discussed Locke's political theory). This conviction is essentially Lockean. Like Locke, I detest the "artificial Ignorance, and learned Gibberish" which "prevailed mightily in these last Ages". Like Locke, I believe that "these profound Doctors were no wiser, nor more useful than their Neighbours; and brought but small Advantage to humane Life", or to our intellectual life in particular. In the following pages and my extensive notes, I shall undermine the authority of established scholars. I shall undermine it because like Locke, I believe that the "floating of other Mens Opinions in our brains makes us not one jot the more knowing", and that "the taking up of another's Principles, without examining them, [makes] not him a Philosopher" (Essay, I, iv, 23). Whether "another" man is a scholar or a beggar, a university professor or a male prostitute, is and ought to be a matter of indifference in our pursuit of truth.

## PART 1. Interpretations of Locke's Account of Appropriation

There are divergent views concerning the point, or the purpose, of Locke's account of appropriation. I shall examine five influential views below, and reject them as false or inadequate. In criticizing those influential views, I shall also be presenting my own view on some subtle points of interpretation, and to this extent, elaborating what I have said in CHAPTER 1. I shall begin with what I call the "popular" view of Locke's account of appropriation. This view is the basis of all scholarly and philosophical interpretations. It minimally expresses Locke's view of property.

1. 1     The "popular" view is the following: Locke defended every man's natural right of property on the ground that property is the fruit of his own labour.<sup>1</sup> Though this view is not false, it is misleading. It inadequately describes the point of Locke's account of appropriation, because it isolates what he says about "the beginning of property" in "the beginning of the world" from the rest of his account. It can yield falsehood if we make some additional assumptions about Locke. I shall clarify a few basic points in order to explore the possibility of falsehood.

Locke did not defend the abstract view that everyone, under any circumstance, has a right to dispose of his goods because he acquired them by his labour. The circumstance must be such that nobody else would be injured by his appropriation (e.g., the circumstance of abundant resources which obtained in the remote past or in 17th-century America, or the circumstance of 17th-century, English economy which did not injure anyone). Nor did Locke defend every man's property in the

abstract sense of a natural "right of property", as the popular view misleadingly suggests. What he defended was a right over the possessions which men acquired by their labour and commerce (and additionally, inheritance) in their 17th-century economic society. This economic society is basically supported by the labour of men, and this basic feature is what Locke projects to the "beginning of the world". Finally, we should note that the popular view in question sometimes gets mixed up with another claim that each man's labour alone legitimizes his property (or his labour is the only legitimate pre-political means of acquiring property). Locke clearly does not defend this claim. As I said, inheritance and the voluntary use of money, as well as each man's labour, count as the legitimate pre-political modes of acquisition and exchange. Locke unequivocally holds that in monetary economy, each man has a right of disposal to those goods which he himself has not acquired directly by his own labour. Money, says Locke, "by compact transfers that profit, that was the reward of one man's labour, into another man's pocket" (Considerations, Works, V, 36). Is the use of money tantamount to robbery? No, not in the least. According to Locke, the use of money is based on tacit consent. He is not a young Marx who treats money as an embodiment of alienated labour. He also holds that the voluntary exchange of labour for wages is a legitimate, pre-political mode of exchange. A "Free-man makes himself a Servant to another, by selling him for a certain time, the Service he undertakes to do, in exchange for Wages"; this exchange gives a "Master" a temporary power over him as it is specified in "the Contract between 'em" (ST, 85).

According to my formulation of the popular view, Locke defended every man's natural right of property on the ground of his labour.



This view must be understood in light of his defence of the smooth function of modern economic society. As Karl Marx clearly saw, Locke's view on property is "the classical expression of bourgeois society's ideas of right as against feudal society," and he provided "the basis for all the ideas of the whole of subsequent English political economy".<sup>2</sup> We only need to add that his defence of modern bourgeois society goes hand in hand with his claims against arbitrary government, or his claims for a government of laws.

1. 2 I shall move on to examine recent commentators' views about the purpose of Locke's account of appropriation. There is a philosophical version of the "popular" view which I have examined above. Recent philosophical commentators (such as L. Becker and J.P. Day) have claimed that Locke has a "justificatory" theory of property, or a "labour theory of property", which provides reasons why each man should have a right to own the product of his labour.<sup>3</sup> On this view, Locke tried to defend, by rational arguments, the claim that each man should have a right to own the product of his labour. It is said that each man's "pains", the "improvement" he brings about, or his "desert", and so forth are the grounds of the claim that each man has a right to own the product of his labour. This approach to Locke's account of appropriation has arisen recently as a result of the philosophical discussion of the grounds of Locke's ground of property. If we take it as a description of what Locke does in Chap. 5, it is clearly inadequate. It is true that Locke makes remarks to indicate the grounds of the ground of property. But he does so only in passing. Moreover, as I have shown, Locke wants to show how men actually came to have property, as well as why that particular mode of appropriation is justifiable. His primary method of persuasion is not rational.

but mythical. He tries to persuade us by an enchanting story about appropriation. Since Locke wants to establish men's rights over their current possessions by an account of how those possessions were acquired, it is not sufficient for him to show the grounds of the ground of each man's property. He must also show the convergence of the legitimate mode of appropriation and the de facto mode of appropriation in the past. Of course, the real past is not so beautiful as Locke painted it in Chap. 5. To drive home the point that the de facto mode of appropriation and the de jure mode coincided, Locke cannot use any rational method of persuasion. He must give us a myth. Those philosophers who cannot see this are bound to mistake their reconstructions for what Locke actually does. I shall not deny that we can extract some arguments from Locke. But he accomplishes his purpose by resorting to a myth of the pre-political past when what ought to happen actually happened.

1. 3     The third view concerning the purpose of Locke's account of appropriation is not very influential, but it is the view offered by experts on Locke. John Yolton has claimed that Locke's primary task in Chap. 5 is neither empirical nor justificatory. His primary task is to solve a "conceptual" problem concerning "how particularization of the common is possible".<sup>4</sup> This claim, though obscurely formulated by Yolton, has been accepted by another professional scholar, James Tully.<sup>5</sup> Yolton vaguely thinks that Locke performed a kind of transcendental deduction of the concept of property in Chap. 5. This is an interesting view. But it is plainly false. Even a schoolboy can understand that Locke's Chap. 5 is not about the idea of property, but about property. Why cannot Yolton see this plain truth? And why does another professional scholar blindly follow the false path paved

by a confused professional? In Sect. II of Appendix 2, I have examined their claims in detail, and have shown that they are utterly confused. I shall not repeat my criticism. Let me simply state my conclusion here: they suffer from a philosophical disease as a result of taking a particular, 19th-century brand of opium. They are addicted to the opium of intellectuals — the neo-Kantian "foundationalist" picture of philosophy. If we are addicted to this meta-philosophical drug, we begin to hallucinate. We begin to see Locke's discourse on property and government as a superstructure erected on his epistemological basis. See my detailed discussion about this ideological inversion in Appendix 2. I have provided a complete cure for this philosophical disease.

1. 4      The fourth view is C.B. Macpherson's. It has been far more influential than the calm neo-Kantian academism of Yolton. Macpherson's central claim is that the "purpose", or the "achievement", of Locke's account of appropriation is to provide "a moral foundation for bourgeois appropriation" or "capitalist appropriation" by removing traditional social obligations. Locke successfully justifies "the natural right not only to unequal property but to unlimited individual appropriation".<sup>6</sup> This is Macpherson's central claim about Locke's account of appropriation. To this, Macpherson adds that Locke took for granted a class differential in natural rights and rationality; and that Locke's political state is an entirely collectivist state which demands the total subordination of individual men to the state.

Macpherson's treatment of Locke has caused a kind of horror among those commentators who were accustomed to a more rosy picture of Locke's "liberalism". There have been confused responses of all sorts. Some have tried to turn Locke into a sensible welfare-state liberal

who would be willing to redistribute the existing distribution of rights and possessions by laws. Some have stopped reading Locke's theoretical writings, and concentrated on his personal attitude. They have tried to vindicate Locke's genuine faith in God and charity in the hope that this could somehow rescue Locke's account of appropriation from Macpherson's harsh condemnation. Some, who do not want to have anything to do with the Marxist-sounding talk about "capitalism", have cowardly objected that it is "anachronistic" to speak about "capitalism" in discussing Locke or the 17th century. These are panic responses which deepened the confusion which Macpherson introduced. These responses, as well as Macpherson's treatment of Locke, have impoverished our already impoverished understanding of Locke and the "liberal" tradition.<sup>7</sup>

Let us concentrate on Macpherson's central claim about the "purpose" or "achievement" of Locke's account of appropriation. His strategy is to show that though Locke initially stipulates "natural law limits" or "the bounds of the Law of Nature", he "removes" "all the natural law limits" in the course of his account of appropriation.<sup>8</sup> The limits of appropriation, says Macpherson, are the "spoilage" limitation, the "sufficiency" limitation, and (implicitly) the "labour" limitation. He explains how Locke transcends, or nullifies, those limitations which he initially placed on appropriation. He thereby claims that Locke's "astonishing achievement" — and his aim — is a justification of "unlimited appropriation" (or "bourgeois" or "capitalist" appropriation).

Macpherson's strategy is based on the tacit assumption that Locke should not alter the "limitations" which he stipulates at the outset. But why not? And whose assumption is this, anyway? It is Macpherson's assumption, and he invites us to share his assumption.

However, there is no reason to believe that Locke shared this assumption. He did not assume that men stayed, or ought to have stayed, within the unchanging limits of appropriation. On the contrary, his account of appropriation clearly suggests the contrary view that the limiting conditions of appropriation changed, and ought to have changed, according to changing economic circumstances. In this respect, Locke is a forerunner of Adam Smith and Karl Marx who tried to explain different forms of property in relation to different stages of economic development. Of course, Locke's rudimentary sociology dissolves and degenerates into his story, without becoming a part of his social science. But Locke's "bourgeois" liberalism has more in common with Smith's historical jurisprudence and Marx's historical materialism, than Macpherson realizes. Locke does not hold that the juridical standard of appropriation available at one stage of economic development (i.e., the primitive economy of hunters, gatherers, and peasant-like cultivators) also applies to appropriation at another stage of economic development (i.e., the successive economy of commerce and commercial agriculture). Locke has a "two-stage" theory of society and uses it in his account of property, just as Smith has a "four-stage" theory of society and uses it in his jurisprudence to explain various forms of property.<sup>9</sup>

It is instructive to ask why Marx, unlike Macpherson, did not condemn Locke for removing the limits of appropriation. As I already pointed out, Marx saw the historical significance of Locke's account of appropriation. He did not drop the slightest hint that Locke should be condemned for removing the "limits" of appropriation.<sup>10</sup> This is not surprising because Marx's historical materialism is a consequence of the bourgeois political economy for which Locke provided foundations.

It is possible to connect Locke with Marx's famous statement. "At a certain stage of their development, the material productive forces of society come in conflict with the existing relations of production", or their legal equivalent, "the property relations". Then the relations of property "turn into" the "fetters" of the development of productive forces.<sup>11</sup> What happens then? And what ought to happen? Marx agrees with Locke that an old "fetter" — or an old limit of appropriation — was removed, and ought to be removed. Of course, while Marx applies this logic to the whole of human history (including the present), Locke applies this logic only to one turning point in human history, i.e., the transition from primitive economy to monetary economy. Money makes it possible for men to accumulate possessions beyond their immediate use, for metal is a lasting thing. The spoilage limitation for appropriation (or more properly, the use/spoilage limitation) becomes a fetter to the commercial development which is based on the labour of men. Hence, it must go. Neither Locke nor Smith consistently applies the dialectic of rights and productive forces to their present-day "bourgeois" or "capitalist" economy. This is where Marx differs from his undialectical predecessors.

Macpherson cannot grasp these subtle points of intellectual history, and tries to condemn Locke on his own medieval assumption. I wonder if he is bold enough to condemn his mentor as well, with his confused standard of hero worship. Marx would condemn Macpherson rather than Locke, for failing to grasp the dialectic of property rights and economic forces — or the dialectic of jurisprudence and political economy. But this is a side issue. The main point I wish to bring out is the following: Macpherson artificially ascribes to

Locke the assumption that the limits of pre-political appropriation remained the same, and ought to remain the same, regardless of changing economic circumstances. Let us remove this assumption, because it is not Locke's. What remains is an artificial procedure of showing that Locke stipulated the limits of appropriation first, and then cleverly removed them. Locke's achievement, says Macpherson, is "astonishing". Is it? No, what is really astonishing is Macpherson's artificial strategy. Let us take a closer look at his artifice.

Macpherson believes, and he leads us to believe, that Locke's "limitations" of appropriation should remain unchanged. This deceptive belief is the product of Macpherson's own confusion. He speaks of the "natural law limits", as I quoted earlier. He equates these "natural law limits" with what Locke calls "the bounds of the Law of Nature" in Chap. 2 of the Second Treatise. In his statement of his own task, Macpherson says he wants to show that Locke's "chapter on property ... removes 'the bounds of the Law of Nature' from the natural property right of the individual".<sup>12</sup> But the three limits of appropriation which Macpherson actually discusses are not "the bounds of the Law of Nature". Macpherson believes that Locke's limits of appropriation (in Chap. 5 of ST) should remain unchanged, because he conflates these limits with "the bounds of the Law of Nature" (in Chap. 2 of ST). Now the "the bounds of the law of nature" remain unchanged, whether a man appropriates or not. As I have made it clear, Locke's "bounds of the law of nature" are the obligations God imposed on every man whether he works or not, and they concern each man's minimal sphere of disposal (i.e., control). Neither in Chap. 5 nor anywhere else does Locke try to remove those "bounds of

the Law of Nature". Those bounds are immovable. But the limits of appropriation, or the "measures" of "property" (as Locke sometimes puts it), do change, depending on the economic circumstances of the day. Once we remove Macpherson's confusion over "the bounds of the Law of Nature" and the limits of appropriation, we can see Locke's attempt to "remove" the limits in a proper light. It is not "astonishing". It is natural, because Locke does not wish to urge men in the commercial age to return to the primitive economy of the past, and live within the narrow confinement of immediately usable property. It is necessary, because he wants to justify the mode of acquisition and exchange appropriate to 17th-century English economic society.

Macpherson's confusion is, in part, due to Locke's loose and informal use of the expression "the law of nature ". "The law of nature" in the proper and strict sense protects each man's minimal sphere of control by prohibiting mutual injury.<sup>13</sup> But Locke speaks of "the law of nature" in a very loose manner, so that he sometimes means by it a changeable juridical standard for appropriation in the state of nature. In Chap. 5 Locke speaks of the "original Law of Nature for the beginning of Property" which "still takes place" among civilized nations (ST, 30). This implies that the "original law of nature" may cease to be operative when the condition of common resources changes (e.g., when fish in the common ocean become scarce). In stipulating the use/non-spoilage limitation for primitive appropriation, Locke also speaks of the "Law of Nature" which "give[s] us Property" and restricts the acquisition of property at the same time (31). Perhaps, he should have made explicit the assumption that the laws concerning the acquisition of property (or appropriation) are changeable, and differ in this respect from the



"law of nature" in the strict sense. But it is fairly clear that the laws or rules of appropriation, in Locke's view, are changeable. Otherwise, he would not have stated the following: "the same Rule of Propriety, (viz.) that every Man should have as much as he could make use of, would hold still in the World, without straitning any body", if men had not invented money (36).

So much for Macpherson's artificial strategy and the confusion related to it. Let us move on to examine his conclusion now. Did Locke justify "unlimited" appropriation, as Macpherson claims? By "unlimited" appropriation, Macpherson means the appropriation which proceeds without the "sufficiency" limitation, or the "spoilage" limitation, or the "labour" limitation. Since Locke "removes" "all" these limits, he justifies "unlimited" appropriation! On the basis of my preliminary discussion, we can see how misguided this procedure is. If Macpherson is correct in pointing out that Locke has removed the three limitations, then he should draw the following conclusion: Locke justifies the kind of appropriation which proceeds without the three limits of primitive appropriation. Since Macpherson mistakes the three limitations of primitive appropriation for the a priori, natural-law limitations of appropriation in general, he turns Locke into a defender of "unlimited" appropriation. We might say that this is a "bourgeois" mistake. As far as I know, no critic of Macpherson has been able to point this out. Critics have been too frightened by what they took to be Macpherson's "Marxist" approach. But his approach is in fact reminiscent of what he frequently condemns, i.e., the "bourgeois" approach. It is he who treats Locke's limitations of primitive appropriation as if they were a priori, ahistorical,

sacred limitations of appropriation "in general".

Let us see more distinctly where Macpherson goes wrong. I shall state, in more specific terms, what he means by saying that Locke defends "unlimited" appropriation. What Macpherson wishes to claim, in essence, is the following: According to Locke, men (in the commercially developed state of nature) can legitimately accumulate as much as they please, without leaving enough for others, without spoiling the goods they do not immediately use, and without using their own labour. How is this appropriation possible? Macpherson's chief answer is that men can employ the propertyless, and can legitimately exploit their labour by offering minimal wages and keeping them at the subsistence level. This is why Macpherson equates "unlimited" appropriation with "bourgeois" or "capitalist" appropriation, treating the latter mode of appropriation as an overt (rather than covert) method of exploiting the labour of other men.

Several objections can be raised against Macpherson's picture of Locke as a defender of "unlimited" appropriation. First, Macpherson fails to notice that the basic principle of non-injury operates throughout Locke's account of appropriation. The "sufficiency" limitation is only a temporary device for the prevention of injury, which is suitable for the primitive state of economy. In Locke's view, commercial economy also prevents injury, as long as men acquire their goods by their labour, or voluntary exchange, or money, and as long as they accumulate money instead of perishable goods. As I pointed out in CHAPTER 1, Section 1. 2, Locke has a confused notion of injury. Nevertheless, he is eager to claim that men in the commercial state of nature are able to avoid injuring others. This is precisely because the principle of non-injury is the minimal requirement of any law.

Secondly, Macpherson is wrong in thinking that Locke's account of appropriation in Chap. 5 is an attempt to justify the exploitation of the labour of the propertyless (i.e., the landless). Macpherson rightly points out that the wage-relationship, according to Locke, is pre-political. Then he extracts from Locke's writings the observation (rather than the justification) that labourers in 17th-century England lived at the subsistence level. By combining the two, Macpherson claims that Locke justifies the natural "right to appropriate the produce of another's labour", and removes the initial "labour" limitation (i.e., the principle that nobody ought to own more than the product of his own labour).<sup>14</sup> Macpherson's application of Marx's insight contributes nothing to Locke scholarship (nor to Marxism for that matter). To begin with, Locke's account of appropriation largely ignores wage-earners and labourers who do not possess a portion of the earth. They remain only in the background of his account. In Locke's view (though not in mine, nor Macpherson's), each individual man in the state of nature expands his landed property by engaging in commerce, rather than by employing other men. We can say that Locke deceives us into believing that the expansion of landed property is possible without the labour of other men. Or alternatively, we may say that Locke tacitly assumes the existence of wage-labourers who work for landowners. In his economic writing, he explicitly states that "without the tenant's industry, ... an owner's land would yield ... little or not profit" (Considerations, Works, V, 37). But whatever his assumption may be in Chap. 5, his task is to show how men came to appropriate distinct portions of the world, rather than how men came to appropriate the labour of other men. As far as Locke's own "purpose" is concerned, it has nothing to do with the

justification of the exploitation of the labour of the propertyless.

Since Macpherson's interpretation has nothing to do with Locke's stated purpose, he conflates his explicit "purpose" with his "achievement", or the hidden "meaning" of his account (i.e., "the meaning it must have had for Locke and his contemporaries").<sup>15</sup> This clearly indicates that Macpherson is creating a myth. Let us examine the central pillar which supports the myth that Locke justified the capitalist's right to appropriate the produce of propertyless labourers. Besides using Locke's remarks on the labouring poor of 17th-century England arbitrarily, Macpherson makes the following claim: "To Locke, a man's labour is so unquestionably his own property that he may freely sell it for wages". And if he sells his labour, then the man who has bought it acquires a right "to appropriate the produce of that labour".<sup>16</sup> Is this story not familiar? This is a feeble imitation of Marx's more subtle account of the "dialectical reversal" of property rights, or the "transition of the laws of property that characterise production of commodities into laws of capitalist appropriation".<sup>17</sup> But again, Macpherson goes astray in the very act of following the path paved by his mentor. Let us see!

Of the sales of a man's labour and the wage-relationship, Locke said the following: a "Free-man" can sell his labour to another man (called "a Master") if he so chooses; and even if he sells his labour, the "Master" has only "a temporary power" as specified in the "Contract" they voluntarily enter into. This remark (quoted earlier) contains historical terms (e.g., "master"), but we must grasp Locke's general theoretical position. He holds that each man has "a property in his person" by nature, so that he has a right to transfer his labour temporarily if he so chooses. Of course, it is up to him what to do with his labour.

If he chooses to go to America to be an independent appropriator, he is free to do so. If he chooses to remain lazy and poor, he is free to do so. But if he chooses to work for another man, then he can exchange his labour for wages for a limited period of time. Then the buyer acquires a limited power over his labour. This is Locke's theoretical position. It is simple and clear. First, each man's labour is his property, so that he has a right to dispose of it (i.e., control or arrange it) as he thinks fit, and nobody else has a right to take it without his consent. Secondly, the wage-relationship is contractual, and is based on the agreement of free, independent and (formally) equal owners of property. The wage-earner does not own any means of production, but he owns his labour and will own money soon. The buyer of his labour owns means of production (especially, land).

Notice the simple point that the wage-relationship is contractual, and a contract is binding on a "master" as well as a "servant" and a "capitalist" as well as a "proletarian". (Here I use these labels without discussing the uninteresting, historical question about what Locke meant by "a servant", or what Macpherson meant by a "capitalist". For I am now discussing the general theoretical point at issue, i.e., the relationship between the one who owns a means of production and the one who does not.) If the wage-contract is binding on the capitalist as well as the labourer, why does Macpherson look at only one side of the exchange? Why does he not say that Locke justifies the labourer's right to receive wages as well as the capitalist's right to receive the produce of the labourer? The answer is clear. Macpherson has a confused idea about the general theoretical position of a "bourgeois" theorist, and then classifies Locke as a "bourgeois" theorist, on the basis of his confused idea. We should not be afraid of calling Locke a

"bourgeois" theorist. He is a first-rate bourgeois theorist who defends the freedom of a contract; hence, the "equal" rights and obligations of the parties who have entered into the contract. What makes a theorist "bourgeois" is not that he "justifies" the capitalist's "right" to exploit propertyless labourers. On the contrary, a bourgeois theorist is the one who looks at economic realities through the juridical lens of equal, individual ownership of property, and the freedom of a contract. His juridical model does not justify, but serves to cover up, the economic exploitation which exists in a free-market economy. Macpherson should have learned this from Marx's "Critique of the Gotha Programme", or his famous comment on "Freedom, Equality, Property, and Bentham" in Capital, Vol. 1, Chap. VI.

A "bourgeois" theorist defends the equal rights and duties of contractors, and it is a whole-hearted defence. The "public authority", says Locke, "is guarantee for the performance of all legal contracts. (Further Considerations, Works V, 144). It is "a public failure of justice" if the state "arbitrarily give[s] one man's right and possession to another" contrary to their voluntary transaction, and thereby alters the standard of formal equality (ibid., 145). A bourgeois theorist not only defends the freedom of a contract, and the equal rights of contractors. He also believes that each man's voluntary transfer of his labour to another man for a limited time is compatible with his right of "dispose of" his labour (i.e., his right to control his labour). Each man's voluntary transfer of labour is not Entfremdung — not a total "alienation" of his labour which would result in a loss of control over what he originally wanted to get in exchange for his labour. "I" decide what to do with "my labour"; "I" agree with other men to use "money" as a universal, commercial equivalent; and "I" agree to work for "him" in

exchange for the wages we have agreed upon. Locke defends the voluntary basis of social relationships so earnestly that he even claims that "the Needy Beggar" is rightly subject to "the Rich Proprietor", not because of "the Possession of the Lord" but because "the Consent of the poor Man" (FL, 43; emphasis added). This is Locke's bourgeois formalism (legalism & voluntarism) par excellence, rather than his deliberate defence of the rich against the poor.

What can we say about Macpherson, then? He cannot describe Locke as justifying the capitalist's right of appropriation. This description is partial. He justifies the rights of those who labour as well as the rights of those who employ the labour of other men. Locke's theoretical position concerning the self-ownership of labour and the freedom of a contract, by itself, does not "achieve" any one-sided justification, either for the capitalist or for the labourers. What it accomplishes instead is that his beautiful theory conceals some harsh economic realities of 17th-century England (e.g., the poverty of labourers). It conceals them from us, from 17th-century readers, and from Locke himself. This "achievement" is not Locke's theoretical achievement, but the ideological function of his theory. Locke cannot even see that there is a serious gap between economic realities (of a certain section of 17th-century England) and his own theoretical construct. Macpherson tries to fill the gap by transforming Locke into a theorist who has provided a "moral foundation" for capitalist appropriation. In so doing, he utterly misrepresents Locke's stature as a first-rate bourgeois theorist, i.e., a theoretical defender of the equal rights of the rich and the poor. He also misrepresents Locke's failure to fill the gap between ugly economic realities of 17th-century England, and the beautiful model of economic society according to which every one has a

property in his person and his goods, and enjoys the maximum freedom of exchange. Macpherson's treatment of Locke is the best example of a confused approach to the relationship between a bourgeois theory of society and the economic reality from which it arises. Locke's account of appropriation is modelled upon the active side of a 17th-century economic society. Its ideological function is to make us forget the plight of the labouring poor. Macpherson wanted to remind us of the labouring poor of 17th-century England. But he should not have given us a myth of the "moral" "justification" of capitalist exploitation.

I have chosen to discuss Macpherson's interpretation of Locke at length, because it has been influential and provoked various confused responses. I have tried to show that it is a deeply confused interpretation. I should like to conclude my discussion by making a few additional remarks. First, since Macpherson does not connect Locke's account of appropriation to his theory of the state he fails to recognize that the point of his defence of economic freedom (as natural) is to preserve the emerging economic order of 17th-century England by laws against the arbitrary power of the state. His view of Locke's political state is entirely absurd.<sup>18</sup> Secondly, Macpherson claims à la R. H. Tawney that Locke "undermine[s]" the "traditional view that property and labour were social functions, and that ownership of property involved social obligations".<sup>19</sup> Locke does undermine this view. But this has nothing to do with his removal of the three limits of appropriation. Even if he had not removed the limits, he could have undermined the traditional or medieval view about "social obligations". Locke's account of the beginning of property is sufficient for this purpose, because it establishes each man's right of property independently of any social



obligation. Finally, since I have said a number of negative things about Macpherson (and could have said more by discussing his subsidiary claim about a class differential in natural rights and rationality), I should like to mention one positive thing. Macpherson is one of the few commentators who have clearly understood that Locke projects features of the 17th-century world of property into the pre-political past. "Locke's state of nature", he rightly points out, is "a curious mixture of historical imagination and logical abstraction from civil society".<sup>20</sup> Well put! We only regret that Macpherson cannot see his own interpretation of Locke as "a curious mixture" of critical imagination and logical abstraction from the existing text.

1. 5 We now come to the last, influential view concerning the purpose of Locke's account of appropriation. This view was first propounded by Peter Laslett in Cambridge, England, in 1960's — almost at the same time when Macpherson offered his interpretation of Locke in North America. Although the two interpretations arose almost at the same time, they are entirely different. Their differences reflect the differences between England and America, between conservative culture and progressive culture, or between the decline of capitalism and the growth of capitalism. Macpherson's attempt to link Locke to capitalist exploitation, like Leo Strauss' earlier suggestion about Locke and the "spirit of capitalism", arose from the promised land of ever-expanding capitalism. But in England, capitalism had been steadily declining. Given this, nobody would expect an English scholar to produce a forward-looking picture of John Locke. In fact, Peter Laslett did not link Locke to the world-historical economic force of American capitalism. He connected Locke's Two Treatises, and its Chap. 5, to a conservative

gentleman who had lived in Kent. Laslett stated his view of Locke's account of appropriation in his editorial notes to Chap. 5 of the Second Treatise: "the whole chapter on property" was written "as a direct refutation of Filmer's works" (ST, 25n.; also 28n.).

Can this local view be true? I shall argue that it is false. But before I begin, I should like to survey the degree of Laslett's influence. His influence seems to be most strongly felt among historically-minded "scholars" in British Isles, rather than "political scientists" in North America. John Dunn was the first to repeat Laslett's view with a slight modification of his own. He said: "Filmer forced upon him [i.e., Locke] the necessity of demonstrating that property right in origin was not simply reducible to positive law".<sup>21</sup> James Tully followed in the footsteps of his mentors, and emphasized the significance of the connection between Filmer and Locke's Chap. 5.<sup>22</sup> Laslett's view was challenged by K. Olivecrona, but P. Kelly tried to meet this challenge by strengthening Laslett's case.<sup>23</sup> Most recently, Alan Ryan has been puzzled by the purpose of Locke's account of appropriation. In his recent book, he has solved his puzzle by treating Locke's account as a reply to Filmer. Though he is acute from time to time, his understanding of Locke has been under the influence of Laslett and Tully. So Ryan has stated the following: "The most plausible explanation I can offer" about the point of Chap. 5 is that "Locke knew that the most important argument in Filmer's armoury was the claim that unless someone had been the initial owner of everything, nobody could have come by individual titles".<sup>24</sup>

Laslett's view has been influential. It has been accepted as true by those scholars who are not happy with Macpherson's treatment of Locke. But Laslett's view is false, no matter how many scholars

may profess to support it. The fact of the matter is simple. Those scholars who have repeated Laslett's view by modifying it here and there are typical victims of professionalism. They have lost their innate ability to read. They have relied too heavily on Laslett, and have repeated his mistake. I recommend the reader to examine what they have written about the relationship between Filmer and Locke's account of appropriation. The reader will soon discover that they do not offer any argument to defend their case.

Illiteracy is a common disease among professional scholars and scientists, and it is not surprising that quite a few Locke scholars have become victims of this professional disease. But this is not all. Laslett and his followers believe that they are offering a genuine, scholarly alternative to Macpherson's treatment of Locke's account of appropriation. This is more "astonishing" than Macpherson's astonishing achievement. I believe that they have lost their sense of reality as well as their reading ability.

Some of the scholars I have mentioned are very famous. But I must confess that I can not find a very high standard of scholarship in the works of those scholars who have blindly followed Laslett's lead. I do have a certain amount of respect for Laslett, because he has made pioneering, scholarly efforts in producing a critical edition of the Two Treatises. He has left a valuable work, though he has made certain errors in his Introduction and extensive notes. But I cannot help condemning those Locke scholars who have been unable to detect his errors. They have taken over the results of Laslett's historical research without critical scrutiny. Are they incompetent? Or do they lack the courage to criticize Laslett? Perhaps, I should not ask these questions. But I believe that students and

general readers would be happier if they did not advance their unfounded claims about Locke and Filmer.<sup>25</sup>

Since those scholars have very little to offer in support of Laslett's view of Locke's account of appropriation, my procedure is simple. I shall examine what Laslett said, and show that his claim is unfounded. If I can show this, then I can undermine the basis of all other claims. So I shall concentrate on Laslett, and give a quick glance at some extra claims. By this method, I shall show that Locke's purpose is not to refute Filmer, nor to meet his challenge.

In his notes to Chap. 5, Laslett makes a few remarks to suggest that Locke tried to write his account of appropriation as a refutation of, or in response to, Filmer. Laslett refers to the opening paragraph of Chap. 5 where Locke alludes to Filmer and formulates his own task. Laslett specifically refers to lines 16-19 of sect. 25 where Locke says, "But I shall endeavour to shew, how Men might come to have a property ... without any express Compact of all the Commoners" (25). He says: "This sentence confirms that this paragraph [i.e., sect. 25], and the whole chapter on property which follows, were written with Filmer's works in mind, and as a direct refutation of them" (25 n). Why does this sentence confirm Locke's intention to refute Filmer's works? The reason is that Filmer "raised the difficulty that original communism could not give way to private property without the universal consent of mankind". Laslett indicates that Locke had in mind a particular passage of Filmer's tract, his "OBSERVATIONS UPON H. GROTIUS DE JURE BELLI ET PACIS". Laslett himself has edited Filmer's works, where we find the following statement made by Filmer against Grotius:

Certainly it was a rare felicity, that all the men in the world at one instant of time should agree together in one mind to change the natural community of all things into private dominion: for without such a unanimous consent it was not possible: for if but one man in the world has dissented, the alteration had

been unjust, because that men by the law of nature had a right to the common use of all things in the world; so that to have given a propriety of any one thing to any other, had been to have robbed him of his right to the common use of all things.<sup>26</sup>

Laslett assumes that the difficulty Filmer points out in the above passage is the "very great difficulty" that Locke mentions in the opening paragraph. According to Laslett, therefore, Locke's task in Chap. 5 is to provide "a direct refutation" of Filmer's view concerning the incompatibility of the original community and property. His task is to show that Filmer is wrong in thinking that the original community cannot be converted into the world of property without a historically implausible, universal consent of men.

What shall we say about Laslett's understanding of the opening paragraph of Chap. 5, and its relationship to Filmer? It is seriously distorted by Laslett's prior belief that Locke must have been eager to refute Filmer. To begin with, it is absurd to speak about "a direct refutation of Filmer's works". Locke directly refutes Filmer's views in the First Treatise, by quoting his passages exactly and extensively. In Chap. 5 of the Second Treatise, however, there is not a single direct quotation from "Filmer's works". Locke only mentions, in the opening paragraph and in sect. 39, the view that God originally gave the world to Adam as his exclusive property. The name "Filmer" is not even mentioned. We cannot possibly describe Chap. 5 as "a direct refutation of Filmer's works", since Locke does not directly attack any specific point Filmer raised. But we shall be charitable to Laslett on this point. We shall take him to be advancing a weaker claim that Locke tried to respond to Filmer's criticism, or his challenge, in Chap. 5. What Laslett really wants to say is something like this: Locke's account, though it is not a direct refutation, is still an attempt to overcome the difficulty he

pointed out to him.

Leaving aside the verbal point about "a direct refutation", let us consider whether Laslett is justified in claiming that Locke responded to Filmer's criticism of Grotius' compact theory of the origin of property. Let us suppose that Locke read Filmer's tracts before he wrote Chap. 5.<sup>27</sup> But this alone does not justify the claim that Locke's account of appropriation is a critical response to Filmer's criticism of Grotius. Before Locke wrote Chap. 5, he read not only Filmer's tracts but other theorists' works. Laslett's claim is based upon the conjecture that the "very great difficulty" Locke mentions is the specific difficulty Filmer raised against Grotius. There are two objections to this conjecture. First, in Chap. 5, Locke does not dispute Filmer's claim, i.e., the claim that the legitimate conversion of community into property is impossible because it requires a historically implausible, universal consent of men. Locke himself does not assume that a universal consent is required for the legitimate conversion of community into property. On the other hand, Filmer's criticism of Grotius has a force only if we assume a universal consent is the sole basis of the legitimate conversion of community into property. Locke explicitly denies the necessity of such a universal consent: "if such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given him" (ST, 28). Given this view, there is no reason to believe that Filmer's criticism of Grotius was a challenge Locke had to meet in Chap. 5.

Secondly, let us recall what I said earlier in my detailed account of Locke's formulation of the problem of the origin of property. In Sec. 1. 1 of CHAPTER 1, I pointed out what Locke calls "a very great difficulty" is a general difficulty of giving a coherent

account of explaining the origin of property upon the assumption of the original community of things. Locke's point is the following: although we may readily grant the existence of the original community of things, "some" find it difficult to understand or explain how each man's exclusive property could arise from the original community. (In his own words: "this [i.e., the original community] being supposed, it seems to some a very great difficulty, how any one should ever come to have a Property in any thing" (25).) As Locke's text stands, we cannot equate this general difficulty with the specific difficulty raised by Filmer, such as the historicity of a universal consent, or the necessity of a universal consent as the basis of legitimate conversion. In fact, it is even arguable that Filmer is excluded from "some" who find it difficult to explain the origin of property. From the very beginning of Chap. 5, Locke takes it for granted that God gave the world to mankind in common. "Some" are those who share this assumption with Locke. This is fairly clear from what he says. Natural reason and revelation confirm the existence of the original community of things. "But this being supposed," "it seems to some a very great difficulty" to explain the origin of property. Filmer does not share this assumption. He is the one who rejects the assumption, contrary to natural reason and revelation.

Laslett's identification of "a very great difficulty" is wrong. He connects it with Filmer's objection to Grotius, without offering any reason. He does so, because Locke also mentions Filmer's view in the opening paragraph. But here again, Laslett is misled by his own belief that Locke tried to refute, or answer, Filmer in Chap. 5. He forgets the simple point that Locke can mention Filmer's view (or anyone else's view for that matter) without intending to refute it, or even taking it seriously. Locke certainly does not take Filmer's alternative

premise seriously. He quickly dismisses it by appealing to biblical evidence in the First Treatise (FT, 24, 29, 30, 40). Of course, he does not have to reject this false premise again in Chap. 5. Neither Filmer's objection to Grotius nor Filmer's own premise poses a serious challenge to Locke. Why does Locke mention Filmer's view in the opening paragraph, then? The answer is that Locke wants to make it clear to his readers that his account is the very opposite of what Filmer stands for (i.e., Adam's original, private dominion and absolute monarchy).

Elsewhere in the Second Treatise, Locke contrasts his own view of freedom with Filmer's view (22; 57), or his own view of taxation with Hobbes' view (138). This does not mean that Filmer's view of freedom, or Hobbes' view of taxation, posed a serious "challenge" to Locke's political theory. Locke contrasts what he takes to be true with what he takes to be false, in order to clarify his position.<sup>28</sup> The same holds true of what he says in the opening paragraph of Chap. 5. He mentions Filmer's alternative premise and conclusion as a false solution to, or a false dissolution of, the prima facie difficulty of offering a coherent account of the origin of property. Then he announces that he will "endeavour" to offer a true solution to the prima facie difficulty of "some", i.e., his own account of the origin of property. (The "difficulty" is only prima facie. It is not difficult for Locke to show the origin of property. "Some" may have a difficulty; but as Locke expresses himself freely and triumphantly at the very end of his account, "it is very easie" for him "to conceive" how labour began property (51).

Laslett has no rational argument to justify his treatment of Locke's account of appropriation. It is bizarre to claim that Locke's statement of his own task ("I shall endeavour to shew ... ") "confirms" his intention to refute, or answer, Filmer's challenge. Filmer offers



nothing which Locke needs to refute, or take seriously, in Chap. 5. But "rational argument" is not the end of the matter. Laslett is a professional historian, and he appeals to the higher court of history. He wishes to maintain something like the following position: even if Locke's account is not a reply to Filmer, it developed out of his attempt to refute or answer Filmer. Given Laslett's professional competence, we naturally expect him to win his case in the higher court of history. Many Locke scholars believe that he has won. But they have forgotten the proverb, "Even Homer sometimes nods". If Homer does, a fortiori Laslett does. In fact, Laslett not only nods, but enjoys a deep, dogmatic slumber. Let me wake him up now.

What facts support Laslett's claim about the development of Locke's account of appropriation? Laslett refers to one "fact" which could make his assertion credible. In his note to sect. 28, ST, Laslett refers to Jean Barbeyrac, the French legal theorist who translated and annotated Pufendorf's De Jure Naturae et Gentium. Barbeyrac remarks, says Laslett, that "Locke's discussion [of the origin of property] grew out of his refutation of Filmer" (28 n.). Since Barbeyrac was a great admirer of Locke as well as the best 18th-century commentator on Grotius and Pufendorf, his remark certainly deserves attention. But alas! This remark is Laslett's own invention. In note 3 to Bk. 4, Ch. 4, Sect. 4, of De Jure Naturae et Gentium [B], Barbeyrac mentions Filmer's view that God originally gave the world to Adam as his exclusive property. He says: "An English Knight, named Robert Filmer, maintains it [i.e., this view] with a great deal of Heat ... to prove the absolute Power which he attributes to Sovereigns, and which, as he pretends, has come down by Succession from the Authority of Adam ...." Barbeyrac continues: "But Mr. Lock [sic.]" "has confuted that Book Patriarcha", and "answers

judiciously" that God gave the world to Adam "in a common Right with all Mankind". This is all. Barbeyrac merely offers a short summary of the First Treatise. He is not at all suggesting that Locke's account of appropriation "grew out of his refutation of Filmer".

Laslett's misuse of Barbeyrac is not accidental. It is a symptom of his deep, dogmatic slumber. He believes that Locke's own political theory (of the Second Treatise) developed out of his refutation of Filmer's doctrine of absolute monarchy. This is Laslett's deeply-held, groundless belief. This belief, together with the intensity of his historical research, must have caused a kind of hallucination. I shall shortly return to Laslett's groundless belief. But let us first ask whether he has more historical facts which can support his claim about the development of Locke's account of appropriation. Since Laslett's claim is obscurely formulated, we shall analyze it into two parts. First, Locke's account of appropriation developed out of his refutation of Filmer's claim about Adam's original, private dominion. Laslett does not explicitly state this view, but his reference to Barbeyrac shows his tacit commitment to it. Secondly, Locke's account of appropriation developed out of his refutation, or reply to, Filmer's criticism of Grotius' compact theory. We have seen that Barbeyrac's note supports neither of these claims. We now ask what else can support them.

As to the first claim, our answer is clear. Laslett's own historical research undermines it, so that he cannot possibly defend it. Laslett has contributed to Locke scholarship by showing that Locke had composed a substantial portion of the Second Treatise before he attempted a refutation of Filmer in the First Treatise. His discussion of the earlier composition of the Second Treatise is solid, and it is free from the kind of hallucination which he suffers on other occasions. (See his Introduction, pp. 58 ff.)

He himself draws special attention to the chronological priority of the Second Treatise in the Forward to the Second Edition (1967):

the First Treatise was written after, not before the Second .... If this claim is in fact justifiable, it has very considerable consequences for the general interpretation of Locke's book and of Locke's attitude. ...

It is somewhat disconcerting, therefore, to read scholarly accounts of the book ... which continue to assert that Locke, having dealt with Sir Robert Filmer in the First Treatise, went on to his Second (p. XV; emphasis in the original).

Let us congratulate Laslett. He has established his claim about the earlier composition of the Second Treatise. But he is wrong in not rejecting the view that Locke's account of appropriation developed out of his refutation of Filmer's claim about Adam's original, private dominion. Locke refuted it in the First Treatise, in the work which he wrote after the Second Treatise. What is really "disconcerting" is that Laslett himself continues to assume that Locke refuted Filmer's claim about Adam's original dominion first, and then "went on" to develop his own account of appropriation. Laslett himself fails to see one of the "very considerable consequences". Chronologically speaking, Locke wrote a substantial portion of Chap. 5 first, and then went on to write a brief refutation of Filmer's claim. We shall, therefore, reject the first part of Laslett's historical claim.

Next we shall reject the second part of his historical claim, i.e., the view that Locke's account of appropriation developed out of his refutation of, or reply to, Filmer's criticism of Grotius. We have already seen that there is no reason that Locke should respond to Filmer's criticism of Grotius seriously. If there is no reason, then there must be something wrong with the historical account which portrays Locke's Chap. 5 as a response to Filmer. Without repeating my criticism of Laslett's

understanding of the opening paragraph of Chap. 5, I shall criticize Laslett's historical understanding of the Second Treatise on historical grounds. His historical understanding of the Second Treatise is the general viewpoint from which he advances his particular claim about the connection between Locke's Chap. 5 and Filmer's criticism of Grotius. Though Laslett offers no rational argument to establish the supposed connection, he tries to persuade us by writing a peculiar, historical account of the origin of the Second Treatise. He maintains that Locke began to write the Second Treatise with the object of refuting the views which Filmer had expressed in his tracts. In his note to sect. 22 of the Second Treatise, Laslett states that it was written "against his [i.e., Filmer's] tracts" whereas the First Treatise was written "against Patriarcha". According to Laslett, Locke "originally planned" the Second Treatise as a critical reply to Filmer's tracts (Laslett's Introduction, p. 59). In fact, he had a 1679 collection of Filmer's tracts (p. 58). But the reply he prepared in the Second Treatise was "insufficient because it left out of account the most important work of the man he was criticizing", namely, Patriarcha published in 1680 (p. 59). So Locke decided to write the First Treatise in order to execute his original plan on a full scale. This historical account, peculiar as it is, is consistent with Laslett's own claim about the chronological priority of the Second Treatise. It also supports the view that Locke developed his account of appropriation by responding to Filmer's "OBSERVATIONS" on Grotius. Therefore, it is very important to see that Laslett's historical account of the Second Treatise is a fairy-tale of his own creation.

What little bird has told Laslett that Locke wrote the Second Treatise in order to refute what Filmer had written in his tracts?

Laslett does not have sufficient evidence to establish his claim about Locke's intention to write the Second Treatise. He quotes Locke's short remark on Filmer from his notebook ("Filmer to resolve the conscience")(p. 58). He also says that Locke mentions Filmer's name in three places of the Second Treatise and refers to Filmer's tracts at one point in the Second Treatise, (ST, 22n.). But what else? Laslett refers to Locke's quotation from Filmer's "OBSERVATIONS" on Hobbes. This quotation can be found in one of Locke's early notebooks. Laslett makes an interesting comment: "We may believe if we wish that the train of thought which gave rise to Two Treatises departed" from Locke's quotation from Filmer's critical remarks on Hobbes. (Laslett's Introduction, p. 33). Well, Laslett may believe it. But since he says, "we may believe if we wish", we do not need to believe it. A sober, literate person would find it extremely difficult to believe what Laslett says. Isn't it strange that Locke explicitly refers to Filmer's tracts only once in the Second Treatise (ST, 22) if his intention is to refute, or respond to, his tracts? Isn't it also strange that Locke mentions Filmer's name only three times in the book (1, 22, 61)? Why does Locke quote small fractions of Filmer's tracts in his notebooks, without discussing his tracts critically or without even expressing his intention to criticize them? And after all, doesn't Locke criticize Filmer's tracts in the First Treatise? We do not need to be puzzled. Locke's references and allusions to Filmer in the Second Treatise are mere additions to the political theory which he developed independently of Filmer. And his quotations from Filmer's tracts in his notebooks merely register those parts of his tracts which Locke read at different stages.

Laslett's "historical" account of the origin of the Second Treatise is acceptable only to those who have already decided to accept it. Such

a decision is arbitrary, however. We would then have to ignore several important, historical facts about the Second Treatise. I shall mention two of them here, to show that Laslett's account is indeed a fairy-tale. (What I say below is elaborated in Appendix 2, Sect. III, (i), and Appendix 1. For details, see these appendices.) First, the Second Treatise has a distinctive title of its own — "An ESSAY Concerning the True Original, Extent, and End OF Civil Government". The separate title indicates that it is an independent, theoretical work dealing with a general branch of politics, not a polemical work against this or that theorist. Laslett dismisses the significance of the separate title of the Second Treatise by offering the most frivolous reason that it was "inserted" in the course of printing. Olivecrona has objected that if it was inserted, the separate title might have been important rather than unimportant.<sup>29</sup> This is a cute objection, though it is not decisive. I have a historical objection which compels everyone to accept the significance of the title of the Second Treatise. The theme of Locke's political theory — the origin, end, and extent of civil government — can be traced back to his early writings such as his draft essay of 1667 titled "An Essay concerning Toleration" (Bourne, Life, I, 174 ff.); his paper "On the Difference between Civil and Ecclesiastical Power, Indorsed Communication, Dated 1673-4" (King, Life, II, 108 ff.); and even his Two Tracts on Government (1660-62). The theme of the origin, end, and extent of civil government has a counterpart in Locke's epistemology — the "origin, certainty, and extent" of human knowledge. The latter theme dates back to 1671. Thus Laslett is entirely wrong in dismissing the significance of the title of the Second Treatise. We must treat it as a general, independent theoretical work. And as I have already said, Locke wrote a substantial portion of it before he attempted to refute Filmer's doctrine of absolute monarchy.

Secondly, Locke's own political theory developed side by side with his theory of toleration. We have good pieces of evidence for this, whereas we have no solid evidence for Laslett's view that Locke's political theory grew out of his refutation of Filmer. I refer to two of Locke's writings I have quoted above. Locke's 1667 draft essay on toleration, and his paper on the difference between civil and ecclesiastical power, contain his parallel analysis of political power and ecclesiastical power. They also contain rudiments of Locke's mature political theory of the Second Treatise. By 1667, he had basic ingredients of his own political theory, though he probably had not developed an account of appropriation. The development of his own political theory is thus independent of his attempt to refute Filmer's tracts. Locke developed it not by refuting the view of this or that theorist, but by trying to set limits to the supreme power of a commonwealth. Similarly, he tried to set limits to the power of church, and the power of understanding,

Besides these two basic facts, there are other facts and considerations which bring into relief the artificiality of Laslett's "historical" account of the origin of the Second Treatise. Unless we are already influenced by Laslett's rumour about the Filmer-Locke connection, it is obvious that the contents of the Second Treatise are almost entirely independent of Filmer's critical remarks on Hobbes, Grotius, Milton, etc. Locke's references and allusions to Filmer in the Second Treatise are ornaments which he later added to his own discourse on the origin, end, and extent of civil government. Moreover his references and allusions are not necessarily to Filmer's tracts. It is likely that Locke had a passage of Patriarcha in mind when he mentioned Filmer's view in the opening paragraph of Chap. 5 ("I will not content myself to answer ..." (25)). There is no chronological

problem here. Locke must have added that portion ("I will not content myself to answer ..." (25)) to what he had already written, when or after Patriarcha was published.<sup>30</sup> Locke's references and allusions to Filmer in the Second Treatise serve to define his position clearly, and they also help him to present two independent treatises in the form of a single discourse on property and government. (Consider the function of Chap. 1 of ST.)

Another relevant point, entirely neglected by Laslett and his followers, is that Locke never treats Filmer as an intellectually challenging or respectable opponent in the Two Treatises. In the Preface, Locke explains why he took "the pains to shew his mistakes, Inconsistencies, and want of ... Scripture-proofs". It is only because Filmer's followers launched a degenerate, propaganda campaign for absolute monarchy by "crying up his Books, and espousing his Doctrine" (p. 156). From Locke's viewpoint, Filmer's doctrine of absolute monarchy is intellectually worthless. His refutation of it in the First Treatise clearly shows that Locke is utterly contemptuous of what Filmer says. He repeatedly states that Filmer's doctrine is an "incoherent" bundle of "plausible", yet "senseless", English sentences. (See Preface: Locke speaks of Filmer's "doubtful Expressions", "so much glib Nonsense [sic] put together in well sounding English". Also, see FT: 1, 7, 14, 19-22, 31, 44, 63, 67, et passim, for similar remarks). Given Locke's contemptuous and aloof attitude toward Filmer's writings, it is unlikely that he took Filmer as a serious, intellectual opponent. It is presumptuous to think that Locke needed to fight a dialectical battle with Filmer's tracts, in order to develop his own political theory. He must have regarded Filmer's tracts and Patriarcha as politically influential, intellectual rubbish.



These considerations inevitably lead us to reject Laslett's "historical" picture of the Second Treatise as a fairy-tale. Let us abandon this picture. Once we abandon it, Laslett's historical claim about Locke's Chap. 5 and Filmer's tracts appears in a new light. It is highly implausible that Locke's account of appropriation developed out of his refutation of, or his response to, Filmer's critical comments on Grotius. Unfortunately, we do not have sufficient data to determine the origin and development of Locke's ideas about appropriation. But I have discredited the "historical" picture of the Second Treatise which Laslett secretly uses to connect Locke's Chap. 5 with Filmer's tracts. With the removal of this picture, Laslett's historical claim about Chap. 5 becomes highly implausible and arbitrary. Nobody knows how Locke developed his ideas about the origin of property. My own conjecture is that Locke developed his ideas of appropriation by "meditation", rather than by "reading" or refuting the views of others. Politics, as Locke stated in 1703, is "a subject" which "require[s] more meditation than reading" (Works, X, 308). In firmly rejecting the authority of books and the influence of others, Locke follows in the footsteps of Descartes and Hobbes.<sup>31</sup> Of course, he knew the views of Hobbes, Grotius, Pufendorf, and Filmer on the question of the origin of property. But it is likely that he persistently followed the policy of independent thinking. What James Tyrrell said about Locke's composition of An Essay Concerning Human Understanding is likely to be true of his composition of the Second Treatise and its Chap. 5: "you utterly refused to read any bookes upon that subject" so that "you might not take any other mens notions" (Correspondence, IV, 36). This conjecture is consistent with my outline of the real (and largely unknown) origin of the Second Treatise, and

it is far more reasonable than Laslett's fanciful talk about Chap. 5 and Filmer's tracts.

Let me summarize my critical discussion of Laslett. I have examined his tacit assumptions as well as his explicit statements. I have criticized him on historical as well as rational grounds. Our conclusion can be stated in two parts. First, as it stands, Locke's account of appropriation is not a refutation of, nor a response to, Filmer. Secondly, in all probability, his account of appropriation developed independently of Filmer. (The word "Filmer" in these two propositions can be taken to include Filmer's own view of Adam's original dominion and his criticism of Grotius).

Now that I have shown that Laslett's claim is unfounded, I can easily destroy the rest of academic claims advanced by his followers. Let us consider what Dunn, Tully, Kelly, and Ryan have to say about the relationship between Locke and Filmer.

First, John Dunn claims that Filmer "forced" Locke to "demonstrate" that the origin of property "was not simply reducible to positive law" (quoted earlier). Dunn repeats Laslett's claim by speaking of Filmer as "forcing" Locke to demonstrate the origin of property. But he adds an ad hoc invention of his own by connecting Filmer with "positive law". But why "positive law"? Filmer does not claim that property is the product of "positive law". The only reason Dunn states this is that Locke speaks of "positive law" in Chap. 5. Dunn offers no justification for his claim. He cannot, even if he tries. His claim is an

improvisation on the main theme which Laslett initially composed.

Secondly, Tully emphasizes that Locke had an "intention to continue his refutation of Filmer" in Chap. 5.<sup>32</sup> Notice the word "continue". This indicates his false assumption that Locke wrote the First Treatise first, and then continued to refute Filmer in the Second Treatise. Tully also creates a number of fairy-tales about "John Locke and his Adversaries" (the subtitle of his book). One of them is interesting, and deserves to be mentioned here. Tully refers to Barbeyrac's note on Filmer's Patriarcha and Locke, just as Laslett did before him. But while Laslett used it to defend the false claim about the origin of Locke's account of appropriation, Tully uses it to create a "historical" link between Filmer and Pufendorf. According to Tully, Pufendorf "says that Filmer is mistaken in supposing that God granted Adam a right of private dominion".<sup>33</sup> Of course, Pufendorf does not say this. It is only Barbeyrac who later adds a note to Pufendorf's De Jure Naturae et Gentium, and explains Filmer's view. Tully, however, seriously believes that Pufendorf wrote a "reply" to Filmer's Patriarcha. It is amazing — and amusing, too — that Tully radically changes the chronological order of the events which took place in the past. Pufendorf's work was first published in 1672; a substantial portion of Locke's Second Treatise was probably written around 1679; Filmer's Patriarcha appeared in 1680; Locke's First Treatise was quickly written after the publication of Patriarcha; and finally, Barbeyrac added extensive notes to Pufendorf's work in his French translation (1706). Given this sequence of events, Locke must travel in a TIME MACHINE to "continue" his refutation of Filmer in the Second Treatise. Pufendorf must be capable of ESP to "reply" to Filmer's Patriarcha. Tully's work is self-consciously "historical", just like Laslett's or Dunn's. We shall call their "historical" approach

Cambridge Historical Revisionism (CHR).

CHR seems to have an Irish branch. Patrick Kelly, who has written a review of Laslett's second edition of the Two Treatises for a historical journal in Ireland, defends Laslett's view of the historical connection between Locke's Chap. 5 and Filmer's criticism of Grotius. This is perhaps the most serious of all attempts that have been made by Laslett's followers to keep his fairy-tale intact. Kelly sanctifies Laslett's fairy-tale by using one of Locke's manuscripts. In order to prove that Laslett was right, Kelly uses a short manuscript piece titled "Morality".<sup>34</sup> It is not dated, but it was probably written sometime between 1676 and 1679. It contains Locke's brief and tentative outline of a Hobbesian compact theory of the origin of property. Kelly claims that Locke abandoned this compact theory because he read Filmer's powerful criticism of Grotius' compact theory. I shall leave aside the interesting question whether Locke really took his Hobbesian compact theory seriously, or he merely experimented with it and jotted down his thought. It is sufficient for my purpose to show that Kelly creates just another fiction.

Kelly refers to sect. 28 of the Second Treatise where Locke denies that "the consent of all Mankind" is required for the legitimate acquisition of property. This denial, in Kelly's view, implies the abandonment of Locke's earlier compact theory. In denying the necessity of a universal consent, says Kelly, Locke is responding to Filmer's criticism of Grotius.<sup>35</sup> This view is a variant of Laslett's. Kelly connects the passage of Filmer's works (which Laslett pointed out) with sect. 28 of the Second Treatise, instead of connecting it with the opening paragraph of Chap. 5. But Kelly is wrong. Filmer's criticism of Grotius is that

a universal consent of men is "a rare felicity" in our history. Locke does not respond to this criticism in sect. 28. Filmer, Grotius, and Pufendorf assume that the legitimate conversion of community into property requires a universal consent. Locke responds to this general assumption; and he rejects it without much polemical heat. ("Man had starved, notwithstanding the Plenty God had given him" if such "a consent ... was necessary" (28).)

Kelly also suggests that Filmer raised another "extraordinarily powerful objection" to Grotius, which forced Locke to give up his early compact theory. This objection, stated in Filmer's "OBSERVATIONS" on Grotius, is that if property can be created by a voluntary agreement of our ancestors, then we should be able to resume our natural liberty at any time to destroy the existing system of property and government. This objection, says Kelly, forced Locke to abandon his earlier compact theory of the origin of property. It revealed the "radical", anarchistic implications of the compact theory, and such radicalism was clearly unacceptable to Locke's "Whig ideology".<sup>36</sup> What a plausible story! But does Kelly offer any argument, or empirical evidence, to establish the credibility of this story? No. He offers nothing. This is just another misjudgement. It rests on the untenable assumption that Filmer was an important figure for the development of Locke's political ideas. Kelly offers nothing to show that this untenable Cambridge assumption is, in fact, tenable. Filmer's objection presumes that a natural right and voluntarily created property are akin to arbitrary power; and that the dissolution of government is ipso facto the dissolution of property. Locke does not share these presumptions, so there is no reason to believe that he felt the force of Filmer's objection to Grotius. Locke could have pointed out that this objection typically shows Filmer's

habit of conflating subtle distinctions — distinctions between types of compacts, or the distinction between a natural right and arbitrary power. There is no reason to believe that this objection, or any other objection of Filmer's, forced Locke to abandon his earlier compact theory of the origin of property. Whether Locke took his earlier theory seriously or not, no historical evidence suggests that his own ideas about property developed as a response to Filmer.

Finally, let us look at what Alan Ryan says about the point of Chap. 5. I quoted earlier Ryan's "most plausible explanation" of why Locke wrote Chap. 5. Locke knew, he says, "the most important argument in Filmer's armoury". It is the argument, or the claim, that "unless someone had been the initial owner of everything, nobody could have come by individual titles". Whose argument is this? This is not Filmer's. Or if it is meant to be his, it is a badly formulated version. It is doubtful whether Ryan ever read Filmer's works. Locke certainly knew the claim that since Adam was the initial owner of the world, "none of his Posterity had any right to possess anything but by his Grant or Permission, or by Succession from him" (quoted by from Filmer by Locke in FT, 21). This is Filmer's claim, and Locke knew it. Of course, Locke knew another claim of Filmer's that if the original community of things had existed, then nobody could have come by property without a historically implausible, universal consent. Perhaps, Ryan has tried to condense Filmer's two claims into one in his formulation of the "most important argument in Filmer's armoury". But in that case, he has obscured Filmer's position by speaking of "individual titles" in an indefinite manner. Filmer holds that a monarch permits his subjects

to use and possess portions of his property (his territory, his crops, etc.). Each subject has a kind of "right" or "title". It is a right granted by a monarch, and can be taken away by the monarch. On the other hand, Filmer does not hold that men could come to have exclusive rights of disposal over goods, or property, by converting the original community. These are the basic points obscured in Ryan's formulation of Filmer's argument.

I should like to end my critical discussion of Laslett and his school by offering a Humean obiter dictum. Suppose that we run over libraries, and take in our hand any volume of Laslett or his historical revisionist school. Let us ask: Does it contain any abstract reasoning concerning the arguments of Locke and Filmer? No. Does it contain any experimental reasoning concerning the facts about Locke and Filmer? No. Commit it then to the flames!!! It contains nothing but sophistry and illusion.

1. 6 A Summary. I have examined one "popular" view of Locke's account of appropriation, and the four interpretations which philosophers and scholars have recently provided. The popular view is no more than a slogan. It is misleading, and it can yield falsehood if it is combined with some false assumptions of our own (e.g., the assumption that labour is the sole basis of legitimate property). Nevertheless, it also contains all seeds of truth. As long as we do not add various false assumptions

of our own, and as long as we locate it firmly in the context of Locke's writings, it is harmless to say that Locke defended every man's natural right of property on the ground that property is the fruit of his own labour. By comparison, the four recent interpretations I have examined bear the mark of learned artificiality. They conceal tremendous ignorance and illiteracy. They are worse than the popular view, and positively harmful. Let me sum up what they are.

The second view — the philosophical interpretation offered by Becker and Day and others — is based on the false assumption that Locke's primary weapon in Chap. 5 is a rational argument. While the popular view can only yield falsehood, the philosophical interpretation is based on the false assumption. I grant that those philosophers who regard Locke as providing rational arguments about the grounds of the ground of property are excused for their mistake, to the extent that they are deliberately using Locke's ideas for the purpose of their own philosophical discussion. As a matter of fact, however, philosophical interpreters of Locke are usually not satisfied with the humble task of using his ideas for their own purpose. They also believe that they can give a satisfactory exposition of Locke's account of appropriation if they present his "arguments". In this, they are utterly mistaken. The role of rational argument is very limited in Locke's account of appropriation, and it is subordinate to the larger plot of his story. In short, they mistake what is secondary (i.e., Locke's remarks on the grounds of the ground of property and his use of rational arguments) for what is primary (i.e., his belief about the ground of property, and his skill of writing a story).

The third view — the neo-Kantian academic reading of Yolton (and Tully) — is worse than the second philosophical interpretation. It turns Locke's account of property upside down. It produces a completely inverted picture of Locke according to which he no longer discusses



property, but only the idea of property. In short, they mistake what is absent (i.e., Locke's discussion of the idea of property) for what is present (i.e., his discussion of property).

The fourth interpretation propounded by Macpherson, and the fifth interpretation by Laslett, are two of the most influential interpretations today. Their great influence, however, has nothing to do with the truth of their claims. I have shown that their central claims are false. Their interpretations remain influential not because they are committed to truth, but because they are inventive and imaginative. They are not at all afraid to create fairy-tales or to make exaggerated false statements. It is their bold commitment to fictions which makes their interpretations exciting and influential. Besides, many of today's intellectuals are not bright enough to detect their inventions, while prospective intellectuals in universities (i.e., students) are constantly brainwashed by the reading list which highly recommends Macpherson's and Laslett's commentaries on Locke to the exclusion of Locke's own works. I am not impressed by their imaginative constructions, or by their influence. But since their inventions have pernicious effects on those who want to understand or evaluate Locke, I have examined them in detail.

To recapitulate my account of Macpherson's artifice: Macpherson treats the "limits" of appropriation as the immutable, natural-law limits, whereas Locke treats them as the limits of primitive appropriation. He shows how Locke performs the astonishing task of removing those limits, whereas there is nothing astonishing about Locke's attempt to explain and justify the transition from primitive economy to the commercial economy which resembles the 17th-century English economy. One of the limits is the "labour" limitation. Locke's removal of this limitation, according to Macpherson, is an attempt to justify the capitalist's right of exploitation. But in fact, it is only an attempt to explain and justify

the transition from the primitive appropriation solely based on each man's labour to the commercial (or "capitalist") mode of appropriation based on each man's labour, money, and the freedom of a contract. Macpherson thinks that Locke makes the wage-contract pre-political in order to justify the capitalist's right of exploitation, whereas Locke's point is to defend the formally equal rights of the employer and the employed (against arbitrary government). Macpherson's errors are countless, and we can go on listing them ad infinitum. It is as if he had a strong need to justify his unlimited right of accumulation. Nevertheless, his invention is so novel that it has fascinated many intelligent men. Even Isaiah Berlin was deceived by Macpherson. In his review of Macpherson's book, Berlin confesses that he had the "wonderfully exhilarating" sensation of "sailing in intellectually first-class waters".<sup>37</sup> "Intellectually first-class waters"? We must make allowance for the fact that Berlin is a great admirer of fictions, as well as a historian of ideas. Macpherson's work, properly speaking, causes in us the sensation of sailing in the first-class waters of imaginative fictions.

One of Macpherson's great inventions, or his basic intellectual errors, must be restated here. He holds that a bourgeois theorist justifies capitalist exploitation on moral grounds. His basic mistake is to use this distorted picture of a bourgeois theorist in order to fill the apparent gap between a part of the 17th-century economic reality (i.e., the impoverished condition of the labouring mass) and Locke's theoretical claims in the Second Treatise. Consequently, Macpherson fails to see that Locke is a bourgeois theorist in the true sense of the word. Locke's theory does not discuss, let alone tries to justify, the fact of economic exploitation which lies under the juridical fiction of the freedom of a contract. He consistently defends the formally equal rights of all

against arbitrary government. In short, Macpherson confuses his own ideology about a bourgeois theorist with the claims of the real bourgeois theorist.

Laslett is no less inventive. His historical imagination creates Locke's target: Robert Filmer. I have shown that Locke's account of appropriation neither is, nor arose out of, his refutation of Filmer. Laslett's basic error is to treat the Second Treatise as a work against Filmer. Since his own historical research established the chronological priority of the Second Treatise to the First Treatise, we should be allowed to conjecture the historical origin of Laslett's deep-seated prejudice. Laslett had edited Filmer's works before he edited Locke's. He had been interested in Filmer before he approached Locke. Perhaps, his historical research on the social structure of 17th-century England had initially led him to study and edit Filmer's works. At any rate, it is fairly clear that Laslett edited the Two Treatises with a strong interest in Filmer. He must have persistently searched for any remark of Locke's which is relevant to Filmer. Laslett's editorial notes to the Second Treatise are full of the statements to the effect that Locke had "clearly" "Filmer in mind" (in writing this or that paragraph). These statements appear in his notes to Chap. 5, and many other Chapters, of the Second Treatise.

In indicating the connection between Filmer and Locke's Second Treatise, Laslett confirms his old deep-seated prejudice; forgets one of the conclusions of his own historical research; and takes Locke's additional, clarificatory remarks (or even his gesture) as the evidence of his intention to "refute" Filmer's tracts.

Despite his errors, Laslett has provided a wealth of information for later scholars. In this respect, his contribution is genuine. Yet his followers have perpetuated his errors in their pedantic writings.

I have quoted passages from Locke's Essay at the beginning of this chapter. Locke condemns those "profound Doctors" who spread "artificial Ignorance, and learned Gibberish". They have "a Gift, which the illiterate had not attained to". I have quoted these words, especially for those "scholars" who have blindly followed in the footsteps of Laslett and reduced themselves to the unfortunate status of pedantic illiterates.

It is a scandal of Locke scholarship that as an interpretation becomes more and more scholarly, it becomes less and less defensible. Even if we allow for the role of imagination in the writing of a history, it is clear that we cannot take seriously the recent academic discussions of Locke's account of appropriation which masquerade as "historical" discussions. We shall abandon CHR and the three other recent interpretations. As long as we have the average reading ability of an adult, we can read Locke on our own and develop the popular view in a more sound manner.

I have undertaken the task of what Nietzsche called a "subterranean man" — one who tunnels and mines and undermines. I have exposed the prejudice of the learned, and undermined their authority. So it is not amiss to celebrate my achievement with the words of Nietzsche: "it is a prejudice of the learned that we now know better than any other age" (Daybreak, Bk. 1, Sect. 2, emphasis in the original).

## PART 2. Interpretations of Locke's Concept of Justice

My condemnation of Locke scholars is not over. I must criticize their interpretations of Locke's concept of justice. My discussion will be brief, because most commentators have neglected his concept of justice or misinterpreted what he meant by "justice".

Richard Cox discusses what he takes to be Locke's "diverse treatment of justice", and pulls together his scattered remarks on divine justice and civil justice. Cox's discussion, however, is too diffuse, and does not clarify what is distinctive about Locke's view of justice (or the state's administration of justice).<sup>38</sup> Raymond Polin similarly conducts a diffuse discussion in his article "Justice in Locke's Philosophy", without clarifying Locke's view of justice. He only discusses Locke's political philosophy in general, without clarifying the negativity of Locke's concept of justice or its relation to his claims about property.<sup>39</sup> These two entirely inadequate discussions of Locke's concept of justice have been further confused by John Dunn's attempt to trace the idea of justice in Locke's various writings. In his article, "Justice and the Interpretation of Locke's Political Theory", Dunn surveys the occurrence of the word "justice" in Locke's writings and explores some ideas associated with the idea of justice (e.g., property, or charity). Just like his predecessors, however, he fails to clarify Locke's concept of justice and makes confused remarks. For instance, Dunn says that there is "nothing remarkable about the reduction of justice to the guarantee of property", and misleadingly suggests that justice has nothing to do with men's lives or liberties (as opposed to their possessions).<sup>40</sup> He fails to grasp Locke's concept of corrective justice and confuses it with an altogether different concept of distributive justice.<sup>41</sup> He also discusses the link between "justice"

and "charity", without even understanding that it is a contrast between negative legality and positive morality.<sup>42</sup> Given these, we must say that Dunn's discussion of Locke's treatment of justice has turned his predecessors' vagueness into a recognizable confusion.

These confused and inadequate discussions are the background from which the most recent, extensive, and scholarly discussion of Locke's view of justice has arisen. This discussion is James Tully's. It is contained in his book, A Discourse on Property. Since Tully's discussion of Locke's view of justice arises from the confused background and his confused "historical" method, we naturally expect that it will be deeply confused. We shall see that this natural expectation is legitimate. I shall take up Tully's deeply confused discussion below. I shall thereby finish my criticism and condemnation of scholars who have recently discussed Locke's political theory.

Tully ascribes to Locke the view that the state has an obligation to "distribute to each member the civil rights to life, to the liberty of preserving himself and others, and to the requisite goods or 'means of it'."<sup>43</sup> He refers to Locke's passage about "the duty of the civil magistrate" in A Letter concerning Toleration, and mistakenly believes that Locke has a theory of distributive justice. I have quoted Locke's passage at beginning of CHAPTER 1, in order to show that he has the concept of corrective justice, rather than that of distributive (or re-distributive) justice. Tully's basic error is to ascribe to Locke the view that the state has an obligation to distribute properties in accordance with an independently available set of natural criteria. Let us see more closely how Tully commits his error. He presents one of the central claims of his book as follows:

According to Locke's argument, if men agreed to private property in land it would be purely conventional and it would be justified

only if it were a prudential means of bringing about a just distribution of property in accordance with the natural right to the produce of one's labour and the three claim rights [to life, liberty, and the possessions required for the preservation of life]. If it did not conduce to this end it would lose its justification and would have to be abolished, either by legislation, or failing that, by revolution.<sup>44</sup>

This passage, like so many others in Tully's book, is based upon his misuse of a number of quotations from Locke and his abuse of historical references. First of all, Tully forcibly extracts the following view from Locke: once men form a political society, their "possessions" become the "possessions of the community", and government acquires a power to "determine the possessions of lands". "The distribution of property [in political society] is now conventional and based upon man's agreement to enter political society."<sup>45</sup> This is not Locke's view, but only Tully's misuse or misunderstanding of sect. 120 of the Second Treatise. Secondly, Tully adds another mistaken notion that the political state, according to Locke, has a power and an obligation to redistribute men's possessions in accordance with the natural criteria (spelled out in the above passage). How does he try to support this mistaken view? Again, Tully uses his peculiar method of science fiction, He makes use of Locke's sentences and other historical references obscurely and arbitrarily, in order to create Locke's theory of distributive justice. Moreover, he appeals to diverse historical sources. It looks as if he were trying to distract our attention, and prevent us from detecting his invention. His invention is more obscure than ingenious. I shall try to pick out a few claims Tully makes in support of his construction. "The fundamental principle of justice", says Tully, is "to each the products of his honest industry (I. 42)".<sup>46</sup> Now in sect. 42 of the First Treatise, Locke says: "Justice gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended

to him". According to Locke's story of appropriation, men's 17th-century possessions are the consequences of the fair acquisition of their ancestors. Tully should not perform a curious barber job of cutting certain bits of Locke's sentence. He also appeals to Pufendorf's discussion of the concept of justice in a most peculiar way. "The society Locke envisages", says Tully, "is adumbrated by Pufendorf in his discussion of distributive justice (1. 7. 9.)".<sup>47</sup> This time Pufendorf needs a TIME MACHINE to "adumbrate" Locke's view of "the society". But Tully goes on to appeal to historical references. He refers to Locke's letter to Molyneux on 19 January 1694 in which he states that "everyone ... is bound to labour for the public good, as far as he is able, or else he has no right to eat" (Works, IX, 332).<sup>48</sup> But clearly this letter does not support the view that the state has an obligation to redistribute man's possessions. On the contrary, Locke is expressing the belief that everyone has an obligation to acquire his bread by his own labour, without relying on the labour of others. By appealing to these references, Tully tries to convince us that Locke's political state has an obligation to redistribute men's properties. But this merely reveals Tully's own inability to understand Locke's concept of justice, and the point of his mythical story of appropriation. Locke's own view is that the state ought to preserve men's properties, and regulate the free exchange of their properties minimally, by administering justice. "Justice", or the administration of justice, is the effective instrument for the preservation and minimal regulation of men's properties. To repeat the point I have made in CHAPTER 1, Locke is trying to defend men's 17th-century possessions against arbitrary government. He is not defending an ideal distribution of property against men's actual possessions, nor is he criticizing the latter in terms of the former. Tully utterly fails to understand this, and holds



that Locke worked out "the normative framework in terms of which a system of property relations is assessed".<sup>49</sup>

I have briefly criticized some confused discussions of Locke's account of justice. To take up Tully's book at the very end of this chapter is neither arbitrary nor inappropriate. As I pointed out in PART 1, his book represents the disaster of CHR (Cambridge Historical Revisionism). But it has a larger historical significance: it symbolizes ~~the~~ deep-seated confusion of recent Locke scholarship. I should like to end my critical discussion of recent interpretations of Locke, by commenting on this confusion.

As it is fairly clear from my comments on Tully in this chapter, his various claims rest either on a dubious practice of accepting various claims of other scholars uncritically; or on the equally dubious use of quotations from Locke and other historical writings. I have examined Tully's book carefully, and have reached the conclusion that it is probably one of the worst books on Locke's political theory written by a 20th-century scholar. The reader can find reasons for this judgement, not only in this chapter but elsewhere in this dissertation.<sup>50</sup> Surprisingly, however, two world-famous Locke scholars have enthusiastically welcomed Tully's book. John Dunn has commented: Tully's book is "the best and the most important piece of extended analysis of Locke's political theory on the issue of property to have been produced by a twentieth-century scholar" (quoted from the dust-jacket of Tully's book). John Yolton offers an equally laudatory comment: "There is no comparable study anywhere in any language. We badly need to have this careful, scholarly examination of that important concept in Locke's political philosophy, property" (quoted from the dust-jacket). Since Tully expresses his indebtedness to Dunn and Yolton in his acknowledgements, it is understandable that the two established scholars have offered the most

laudatory comments. I also understand that Dunn and Yolton wanted to encourage a young scholar; and that the advertisement of a book is almost always an exaggeration. Nevertheless, it is significant to note that they evaluate Tully's book without critically examining its contents.

Though it is a scholarly book, it is unfortunately based on the confusion of the past few decades. In praising this book, therefore, Dunn and Yolton have endorsed the confusion of recent Locke scholarship (of which they are a part). They do not know that Tully's book should be regarded as a climax of the chaos of present-day Locke scholarship. Without this recognition on their part, however, it would be impossible to remove the present-day chaos from Locke scholarship, or to establish any reliable scholarly standard within Locke scholarship.<sup>51</sup>

I should like to add one final remark to qualify the destructive project of this chapter. My criticism and condemnation extend to many recent commentators. But this should not be taken to imply that all recent commentators are illiterates, or near-illiterates at best. As I have briefly indicated in the beginning of this chapter, there are a few who have developed sound interpretations of Locke's account of appropriation and his account of justice. K. Olivecrona and G. Parry are two of those exceptional commentators. I have not examined their views, because they are more or less correct and defensible (if not in every detail).<sup>52</sup> Their works shine like precious metals, in the middle of the muddled and contentious interpretations of other commentators. But my own exposition of Locke in the previous chapter preserves positive elements of their interpretations, while it is free from their small errors and all gross errors of other commentators.

I have presented my own exposition in CHAPTER 1; and I have destroyed all major alternatives to that exposition in CHAPTER 2. These two chapters, taken together, dialectically transcend all recent interpretations. My next task is to examine Locke himself, rather than his confused interpreters. I shall undertake this task in the following two chapters. I shall begin with a critical and historical examination of the most neglected part of Locke's political theory — his concept of property.

## NOTES to CHAPTER 2

1. This popular view can be found everywhere. It is a combination of two ideas. First, Locke is a defender of "natural rights" (whatever that means); and secondly, he holds that a natural right of property "arises from" or "is derived from" or "based upon" each man's labour (whatever that means). This popular view is the minimal core of any sophisticated understanding. But since the expressions such as "natural rights" and "arise from" remain undefined, I call it the "popular view".

This "popular view" can yield a number of mutually incompatible interpretations as to what Locke tried to defend. It merely expresses the minimal core of Locke's account of appropriation, without explaining what he argued for or what he argued against. For a useful, historical discussion of various uses of Locke's minimal-core notion, see Richard Schlatter, Private Property: The History of an Idea (New York: Russell & Russell, 1973), Chaps. 8-10.

2. Karl Marx, Theories of Surplus Value, Part I, trans. E. Burns (London: Lawrence and Wishart, 1969), p. 367.
3. L. Becker, Property Rights: Philosophical Foundations (London: Routledge & Kegan Paul, 1977), Chap. 4. J.P. Day, "Locke on Property", Philosophical Quarterly, XVI, 64 (1966); rpt, in Life, Liberty and Property, ed. G.J. Schochet (Belmont: Wadsworth, 1971). R. Nozick's Anarchy, State and Utopia (New York: Basic Books, 1974) stimulated recent philosophical commentators to think about the philosophical foundations of the so-called "labour theory of property". Ibid., pp. 174ff.
4. J. Yolton, John Locke and the Compass of Human Understanding (Cambridge: C.U.P., 1970), p. 187.
5. J. Tully, A Discourse on Property (Cambridge: C.U.P., 1980), p. 3 and p. 100.
6. C.B. Macpherson, The Political Theory of Possessive Individualism (Oxford: O.U.P., 1962), p. 221.
7. The vast, secondary literature on Locke in recent years embodies the confused responses which I have illustrated in this paragraph. Specimens of these confused responses can be found in the writings of the Cambridge trio of Locke scholars — Laslett, Dunn and Tully. See Laslett's Introduction to the Two Treatises, pp. 103ff.; Dunn, The Political Thought of John Locke: An Historical Account of the Argument of the Two Treatises of Government (Cambridge: C.U.P., 1969), Chaps. 16-19; and Tully, op. cit., pp. 136 ff., p. 142f., et passim.

I should like to add a few remarks on the confused responses. I have discussed the confused picture of Locke as a welfare-state liberal in note 11, CHAPTER 1. This is the first type of confused response. Secondly, Dunn typifies the attempt to concentrate on Locke's personal attitude, especially his religious views. He does not take his major writings on politics seriously. This is a misguided approach to Locke's political theory. As an alternative to Macpherson's picture of Locke, Dunn presents the view that Locke's political theory is an elaboration of Calvinist social values, the core of which is the doctrine of the calling. (Dunn, op. cit., Chap. 19). I hope everyone can see that this is a monstrous invention. This thesis, as well as Dunn's talk about the significance of religious or theological foundations for Locke's political theory, makes me wonder whether Macpherson drove him mad. Nowhere did Locke claim that social and political institutions can be justified if, and to the extent that, they facilitate each man's fulfilment of his divinely ordained calling. Did Dunn have a chance to read Locke's A Letter concerning Toleration? There Locke states, not just once but again and again, that political affairs of this world are distinct from religious or theological affairs of the next world. The "whole jurisdiction of the magistrate", says Locke, "reaches only to these civil concerns", and "all civil power, right and dominion, is bounded and confined to the only care of promoting these things". It "neither can nor ought in any manner to be extended to the salvation of souls" (Works VI, 10). Locke's political theory, which developed side by side with his theory of toleration, has nothing to do with "Calvinist social values" or "the doctrine of calling". As far as Locke's personal attitude, as distinct from his theory, is concerned, he was born in a Puritan family. But Dunn has merely avoided discussing Cranston's view that "Westminster [School] did purge Locke of the unquestioning Puritan faith in which he had grown up" (Cranston, Life, p. 19). It seems that Dunn has borrowed his idea from Weber without studying Locke's theoretical writings, or his life.

The third type of confused response is to say that a talk about "capitalism" is "anachronistic". The charge of anachronism is a serious one only if we have a solid chronology of capitalism, together with a clearly defined set of criteria for describing something as "capitalism". We should note that both Marx and Weber found the important beginnings of the capitalist mode of production in 16th-century Western Europe. To quote from Marx: "The starting-point of the development that gave rise to the wage-labourer as well as to the capitalist, was the servitude of the labourer. ... To understand its march, we need not to go back very far. Although we come across the first beginnings of capitalist production as early as the 14th or 15th century, sporadically, in certain towns of the Mediterranean, the capitalistic era dates from the 16th century" (Capital, Vol. 1 (New York: International Publishers, 1967), p. 715). Given the orthodox chronology of capitalism, established by Marx and Weber, it is not surprising that Macpherson uses the label "capitalist" in his discussion of Locke. In fact, Macpherson's talk about "capitalism" is not in any way extravagant, if we compare it with a recent

Cambridge historian's conclusion: "England was just as 'capitalist' in 1250 as it was in 1550 or 1750". This historian is Alan Macfarlane. He has reached this conclusion after a careful study of patterns of ownership in England. He adopts the criteria of "capitalism" which Marx, Weber and other economic historians habitually use (i.e., the existence of a developed market, the mobility of labour, the treatment of land as a commodity, etc). By these criteria, he concludes that England in 1250 was "capitalist". A. Macfarlane, The Origins of English Individualism (Oxford: Basil Blackwell, 1978). His conclusion, which I have quoted, can be found on p. 195 of this book.

Now Macpherson does not spell out his criteria of "capitalism" in any detailed way. However, he adopts one crucial, Marxian criterion of the capitalist mode of production: each man's labour-power is a commodity. This criterion is presumed in his discussion of Locke. We can certainly conduct disputes about various chronologies of capitalism. But given the criteria of adopted by Marx, Weber, and many economic historians it is not improper to use the label like "capitalist" in our discussion of Locke (provided we know what we are talking about).

8. Macpherson, op. cit., p. 199. He speaks of "Locke's purpose" (p. 197) and Locke's "achievement" (p. 199, p. 220), without distinguishing between the two. The expressions such as "natural law limits" and "limitations" are Macpherson's, rather than Locke's. The phrase "the bounds of the Law of Nature" is a quotation from Locke. These points are relevant to my criticism of Macpherson's interpretation, so they are worth confirming here.
9. Adam Smith's account of the modes of acquiring and transferring property ("occupation", "accession", "prescription", "succession", and "tradition") can be found in his Lectures on Jurisprudence, ed. R.L. Meek, D.D. Raphael, P.G. Stein (Oxford: O.U.P., 1978), pp. 13. Smith explicitly states that the modes, or rules, of acquisition "vary considerably according to the state or age society is in at that time". "There are four distinct states which mankind pass thro:- 1st, the Age of Hunters; 2ndly, the Age of Shepherds; 3dly, the Age of Agriculture; and 4thly, the Age of Commerce". Ibid., p. 14.

Smith's theory of the "four stages" of society has been made famous by Ronald Meek and others, and its relationship to Marx's historical materialism has been explored. I suggest that the rudiments of Smith's theory of the "four stages" can be found in Locke's story of appropriation.

10. In his brief discussion of Locke's account of property in Theories of Surplus Value, Marx speaks of the limits of property just as Macpherson does. It is fairly clear Macpherson is indebted to Marx for developing his interpretation of Locke. "One limit to property", says Marx, is "the limit of personal labour" while "the other [limit] is that a man should not amass more things than he can use". Then Marx observes, without showing any sign of condemnation or astonishment: "The latter limit however is extended by exchange of perishable products for

money". (Quoted from E. Burns' English Translation of Theories of Surplus Value, Part I, P. 366.)

11. Marx, The Preface to A Contribution to the Critique of Political Economy, trans., S.W. Ryazanskaya (Moscow: Progress Publishers, 1970), p. 21. Many readers would find my comparison of Locke with Marx interesting. My comparison, however, is a limited one. I am not at all suggesting that there is an overall similarity between their social and political theories. Locke's individuals, after appropriating resources, form a political society as they think fit. On the other hand, Marx's men, in the process of the social production of their existence, enter into definite social relationships, independently of their will. This is one of the most striking differences. However, I have offered a valid, limited comparison in order to put an end to the fuss Macpherson has made, and others continue to make.
12. Macpherson, op. cit., p. 199.
13. What Locke calls "the law of nature" in the Second Treatise has two important features. First, its spirit or general slogan is the "Preservation of all Mankind" (ST, 7; 135). God, the maker of the law of nature, commands everyone to preserve himself and the rest of mankind. Secondly, Locke's idea of "preservation" is an essentially negative idea of leaving oneself or others unharmed. The spirit of the law of nature can be negatively expressed as a set of prohibitions. Namely, "Man" has "not Liberty to destroy himself", and "no one ought to harm another in his Life, Health, Liberty, or [minimal] Possessions" (ST, 6; emphasis added). The latter is the fundamental precept which prohibits mutual injury. Locke also adds the precept that nobody ought to destroy any lower "creature" purposelessly (6).

Some positive obligations (e.g., the obligation of charity) may also be included among the obligations of the law of nature. However, positive precepts are not the core of a system of the law of nature. For Locke's distinction between positive precepts (or obligations) and negative ones, see Correspondence, I, 559; and ELN, VII, 193 ff. He says: "all negative precepts are always to be obeyed", and "positive commands only sometimes". (Correspondence, I, 559.)

14. Macpherson, op. cit., pp. 214-220.
15. What Macpherson actually does is to make imaginative use of Locke to create a new fiction. But he writes as if he were a historian:

When Locke's assumptions are understood as presented here, his doctrine of property appears in a new light, or, rather, is restored to the meaning it must have had for Locke and his contemporaries (ibid., p. 220; emphasis added).

16. Ibid., p. 215.
17. Marx, Capital, Vol. 1, Chap. XXIV, Sect. 1, pp. 579 ff;

especially, pp. 583 f. (Page number are those of the edition referred to in note 7 above.)

18. See my comment on Macpherson's absurd claims about Locke's absolutist state in CHAPTER 1, note 22.
19. Macpherson, op. cit., p. 221.
20. Ibid., p. 209; cf. p. 217.
21. Dunn, The Political Thought of John Locke (1969), p. 66.
22. Tully, A Discourse on Property (1980), pp. 96 ff. et passim.
23. Olivecrona, "Appropriation in the State of Nature: Locke on the origin of Property", Journal of the History of Ideas, XXXV, 2 (1974), p. 221; and "A Note on Locke and Filmer", The Locke Newsletter No. 7 (1976), pp. 83-93. P. Kelly, "Locke and Filmer: Was Laslett so Wrong after all?" The Locke Newsletter, No. 8 (1977), pp. 77-91.

My own view of the relationship between Locke and Filmer resembles Olivecrona's, though I have developed it independently.

24. Ryan, Property and Political Theory (Oxford: Basil Blackwell, 1984), p. 27.
25. Their claims used to be confined to a small intellectual circle of Locke scholars, lecturers in universities, and postgraduate students. But recently, John Dunn's Locke appeared in the Past Masters series (Oxford: O.U.P., 1984).

Let me quote what Dunn says in the above-mentioned book about Locke's account of appropriation: Locke "sets himself to answer fully the main critical thrust of Filmer's attack on Grotius" (ibid., p. 37). This is a reproduction of Laslett's unfounded claim. Dunn also repeats Laslett's (false) view that the Second Treatise, as well as the First Treatise, is Locke's polemical work against Filmer. He typically speaks of "Locke's response" to "the challenge of Filmer", in discussing Locke's own political theory (ibid., pp. 32; pp. 44). Anyone who explains Locke's own political theory (of the Second Treatise) as a "response" to Filmer's "challenge" makes a desperate attempt to conceal the radical gap and disconnectedness that exist between Filmer's political doctrine and Locke's theory of the origin, end, and extent of civil government. Locke did not take Filmer as posing a serious intellectual challenge, either in the First Treatise, or in the Second Treatise. But Dunn, who can only copy Laslett's approach to Locke's political theory, claims that the Two Treatises is "a product of Locke's own imaginative response to the challenge of Filmer" (ibid., p. 33). Notice that one adjective "imaginative" is conveniently used to cover up the radical gap that exists between the contents of the Second Treatise and Filmer's writings.



Dunn's little book, Locke, also recommends his disciple's book. Tully's A Discourse on Property is listed as the "best" book on Locke's account of property (*ibid.*, p. 93). It is disconcerting to find that an easily available, introductory book on Locke presents local rumours of Cambridge as true statements, and further recommends one of the worst books on Locke's account of property as the "best" book.

26. Patriarcha and Other Political Works of Sir Robert Filmer, ed. Peter Laslett (Oxford: Basil Blackwell, 1949), p. 273.
27. Laslett has produced the evidence that Locke read the 1679 Collection of Filmer's tracts in the year of its appearance. See Laslett's Introduction to the Two Treatises, p. 58. Laslett further assumes that Locke wrote Chap. 5 of the Second Treatise in 1679 after (rather than before) he read Filmer's criticism of Grotius. I shall grant this assumption, though it can be challenged.
28. Laslett fails to recognize Locke's method of contrasting his own view with his opponent's. Let us take one specific passage from Chap. 5 of the Second Treatise. In sect. 39, Locke sums up his account of the beginning of property as follows:

And thus, without supposing any private Dominion, and property in Adam, over all the World, exclusive of all other Men, which can no way be proved, nor any ones Property be made out from it; but supposing the World given as it was to the children of Men in common, we see how labour could make Men distinct titles to several parcels of it .... (ST, 39.)

In this passage, Locke contrasts his own premise of the original community of things with Filmer's premise of Adam's original, private dominion. This contrast presupposes the falsehood of Filmer's premise. Locke says that Filmer's premise "can no way be proved" to be true. But Laslett fails to recognise Locke's method of contrasting truth with falsehood, and remarks that the above passage is "directed against Filmer" (39 n.). What Laslett means is that Sect. 39 reveals Locke's intention to "refute" Filmer. Yet everyone can see that the above passage clarifies Locke's own position in opposition to Filmer's alternative.

29. Olivecrona, "A Note on Locke and Filmer", The Locke Newsletter, No. 7 (1976), p. 85.
30. In CHAPTER 1, I have quoted a passage from Patriarcha where Filmer argues for the rejection of Grotius' notion of the original community of things, and the adoption of his alternative premise. (See CHAPTER 1: Sect. 1. 1 and note 1.) The passage I have quoted there is likely to be the one Locke had in mind when he wrote lines 10-16 of Sect. 25, Chap. 5, ST ("I will not content myself to answer, ..., exclusive of all the rest of his Posterity".) In my discussion of Locke's formulation of the problem of Chap. 5, I have analyzed Sect. 25 and marked lines 10-16 as Passage (iii). Compare Passage (iii) with the passage which I quoted from Patriarcha, and confirm that Locke is likely to be alluding to Patriarcha.

Olivecrona has already suggested that lines 10-16 were probably inserted after the publication of Patriarcha. See Olivecrona, "An Insertion in Para. 25 of the Second Treatise of Government?" The Locke Newsletter, No. 6 (1975), pp. 63-66. His suggestion is based on his well-developed ability to read Locke's English (a rarity among Locke scholars today!) and his conjecture that Filmer's small tracts would not have caused him to add lines 10-16. However, he was not able to point out the particular passage of Patriarcha Locke had in mind. I have pointed out the passage in question. From now on, Olivecrona shall not fight a lonely battle against Laslett and his followers!

31. For Locke's view of the relationship between "thinking" and "reading", see his comments on "reading" in his Conduct of Understanding, Works, III, sect. 20. There he says: "Reading furnishes the mind only with materials of knowledge"; it is "thinking" that "makes what we read ours". It is "not enough to cram ourselves with a great load of collections; unless we chew them over again, they will not give us strength and nourishment". We can turn materials into knowledge "only by our own meditation, and examining the reach, force, and coherence of what is said".

Locke's suggestion concerning "reading" seems commonsensical. But this must be understood against the background of his policy of independent thinking, and of the anti-scholastic trend in modern philosophy. Locke's anti-scholastic remarks abound in the Essay. I have quoted a few samples at the beginning of CHAPTER 2. He detested the "floating of other Mens Opinions in our brains (Essay, I, iv, 23). Locke's policy of independent thinking is similar to Descartes', and Hobbes'. Locke's philosophical thinking began when he encountered Descartes' works. Madam Masham reports: "The first books (as Mr. Locke himself has told me) which gave him a relish of philosophical studies were those of Descartes. He was rejoiced in reading of these" (Cranston, Life, 100). To say the least, he enjoyed Descartes' individualistic mode of thinking. Locke quoted a statement from Hobbes' Leviathan: wrong definitions give rise to "false tenets and senseless Tenets" and "make those men that take their instruction from the authority of books, and not from their meditation, to be ... below the condition of ignorant men". This is the only extant, direct quotation from Hobbes that can be found in the entire Lockean corpus. (For this information, see Laslett's Introduction to the Two Treatises, p. 74. This direct quotation is found on the flyleaf of a volume in Locke's library, not in his notebook.) Locke certainly agrees with Hobbes and Descartes that public language and public knowledge are corrupt, and that each private individual must "meditate" independently of scholastic rubbish (i.e., "books").

32. Tully, A Discourse on Property (1984), p. 96.
33. In this paragraph, I tease Tully in a frivolous manner. But I do not wish to misrepresent his view. In this note, I try to be pedantic and quote his own sentences exactly. First, on p. 75 of A Discourse on Property, Tully says:

He [i.e., Pufendorf] says Filmer is mistaken in supposing that God granted Adam a right of private dominion. Because 'Property denotes an Exclusion of the Right of others to the thing enjoyed' it cannot 'be understood, 'till the World was furnished with more than one Inhabitant' (4, 4, 3).

I have quoted a part of this passage in the text.

As we can see, Tully quotes Pufendorf's words from (4, 4, 3) of De Jure Naturae et Gentium. But the problem is that Pufendorf does not mention Filmer in this particular place, nor in any other part of his encyclopaedic work. To solve this difficulty, Tully takes a second step. He adds the following explanatory note: "Although Pufendorf does not mention [Filmer] by name, Barbeyrac suggests that the critique refers to an 'English knight, named Robert Filmer' (4, 4, 3n)" (Tully, op. cit., p. 178, n. 9). Thus in Tully's view, Pufendorf criticized Filmer's view in Bk. 4, Ch. 4, Sect. 3 of De Jure Naturae et Gentium without mentioning his name, yet Barbeyrac knew Pufendorf's allusion to Filmer.

34. Locke's manuscript piece "Morality" was published in The Locke Newsletter, No. 5. (1974), pp. 26-8.
35. Kelly, "Locke and Filmer: Was Laslett so Wrong after all?" The Locke Newsletter, No. 8 (1977), pp. 82 f.
36. Ibid., pp. 84 f.

37. Isaiah Berlin, "Hobbes, Locke and Professor Macpherson", Political Quarterly 35 (1964), p. 468. Berlin's remark, quoted here, concerns Macpherson's book as a whole. My criticism of Macpherson is restricted to his treatment of Locke.
38. Richard Cox, "Justice as the Basis of Political Order in Locke", Nomos VI: Justice, ed. C.J. Friedrich & J.W. Chapman (New York: Aldine-Atherton Press, 1963).
39. Raymond Polin, "Justice in Locke's Philosophy" in the same Nomos volume cited above (in note 38).
40. John Dunn, "Justice and the Interpretation of Locke's Political Theory", Political Studies, Vol. XVI, No. 1 (1968), p. 77.
41. Dunn does not even mention "corrective justice". He vaguely associates Locke's concept of justice with the distribution of property. See ibid., pp. 76, 79, & 80.

A part of Dunn's confusion arises from his strategy. He searches for Locke's use of the adjective "just", or his idea of the "just" distribution of goods. It never occurs to him that there is a close relationship between the noun "justice" and another noun "law". For Dunn's preoccupation with the adjective "just", see ibid., p. 80 in particular. Why doesn't Dunn discuss "law"? He is completely confused about the role of "positive laws" in Locke's political theory. Dunn says "since property right is in fact a function of positive law ..., this would seem to mean that all positive law property-distributions are necessarily just". Having stated this un-Lockean view, he denies it in a lukewarm manner. "Locke seems never to have adopted such an obsequious posture (ibid. p. 80). Then Dunn continues to wonder how "positive laws" are linked to "property" (ibid., p. 81). Given his deep-seated confusion about the ABC of Locke's political theory, we cannot possibly expect him to clarify Locke's view of the relationship between "justice" and "law".

42. For Dunn's obscure remarks about the relationship between "justice" and "charity", see ibid., p. 81 ff. He does not grasp the fundamental point that the "magistrate" (or the supreme, legislative agent) ought to dispense "justice", without practicing "charity" to any particular section of the whole community. "Charity" has nothing to do with Locke's political theory. It is a positive Christian virtue based on love, and his political theory is independent of his appeal to "love" or "charity". Locke is not a Feuerbach of the 17th century!

Dunn concedes, at one point: "Justice and Charity, it is true, are no longer equivalent" (ibid., p. 82). At bottom, he seems to be inclined to establish the equivalence of "justice" and "charity". Yet he quickly adds his characteristic "but", and goes on to muddle himself. In the end, of course, he discusses his favourite work, The Reasonableness of Christianity. What on earth does Dunn want to say? Nothing in particular. He just wants to save Locke from Macpherson's interpretation by talking about

"charity" (or "justice") in an obscure manner. Perhaps, he wants to say that Locke emphasized the significance of "the duty of charity". Of course, Locke emphasized this. Who would deny this? But the important point is that Locke emphasized it as a positive, Christian moral virtue. It is distinct from the negative virtue of justice, or from the administration of justice. To repeat, "charity" has nothing to do with Locke's political theory. As I have shown in PART 2 of CHAPTER 1, Locke contrasts "justice" with "charity". Cf. my comment on Dunn's confusion about the political and the religious in note 7 above.

43. Tully, A Discourse of Property (1980), p. 166.
44. Ibid., p. 168.
45. Ibid., pp. 164f.
46. Ibid., p. 167.
47. Ibid., p. 168.
48. Ibid.
49. Ibid., p. 169.
50. My critical comments on Tully can be found in CHAPTER 1, note 11; CHAPTER 2, PART 1 & PART 2; CHAPTER 3, note 13 and the text it refers to; CHAPTER 3, note 15 and the text it refers to; and Appendix 2, Sect. II (iii).

The best way to evaluate Tully's book is to examine the way in which he uses Locke's sentences, historical references, and the claims of other scholars. His use is entirely arbitrary; it is an abuse. First, Tully misreports what Locke actually says. For this, see J.L. Mackie's review mentioned below in note 51. Secondly, he uses historical references to forge connections. As we have seen in this chapter, Tully misuses or abuses Pufendorf and Barbeyrac. But he also abuses Barbeyrac's discourse on the science of morality, to forge a connection between Locke's political theory and his epistemology. For this, see Appendix 2, Sect. II (iii). Thirdly, he embraces various claims of "famous" scholars and philosophers ~~incorrectly~~. He agrees with Yolton that Locke's account of appropriation is a "conceptual" inquiry. He agrees with Laslett that it is a refutation of Filmer. He agrees with Dunn that "[w]hen men enter society, what their 'property now is what the legal rules specify'" (ibid., p. 168). These three views, which Tully takes upon trust, are false and deeply confused. But the truth or falsehood of a claim does not interest him in the least. Oh, here is another one. Tully quotes Mackie's remark out of context, and uses it arbitrarily to support the indefensible claim that men's possessions in the community are owned by the community (ibid., pp. 164f.).

51. Dunn and Yolton jointly rhapsodized over Tully's book. This is a symptom of the widespread corruption of intellect among Locke scholars. But not all scholars and philosophers are corrupt, or blind. I should like to mention the late J.L. Mackie here. The acute, critical, and impartial Mackie reviewed Tully's book. Though he welcomed the book with some enthusiasm, he rightly pointed out that "there are a number of passages where what Locke says is either misreported or pretty clearly misunderstood". See Mackie's review in Philosophical Quarterly, Vol. 32 (1982), p. 92. Mackie also listed some of the innumerable instances of Tully's misuse or misunderstanding of Locke's passages (ibid., pp. 92f.). It is a great pleasure to read Mackie's critical discussion of Tully's book. Nevertheless, even the judicious Mackie at one point wrote in favour of Tully's interpretation of Locke as a proponent of a theory of distributive justice: Tully's interpretation is not only "challenging" or "exciting", but "also at least nearer to the truth than that to which it is opposed" (ibid., p. 92). Mackie here treats Tully's interpretation as being opposed to Macpherson's. Pace Mackie, I must say that there is no question of verisimilitude here. Tully is simply wrong. Locke's mythical story of appropriation abolishes the gap between men's present possessions and their legitimate possessions, so that according to Locke's political theory of the Second Treatise, there is no room for the question whether the state ought to re-distribute men's possessions according to their legitimate possessions. Mackie actually does not accept the substance of Tully's interpretation. So there is no good reason for his judgement that Tully's interpretation is "nearer to the truth" than Macpherson's. When a new interpretation is given, even the most sensible philosopher becomes excited. After the death of the judicious Mackie, there seem to be very few reliable judges in the republic of letters.

As far as I am concerned, I shall regard any new exciting interpretation in the future as an imaginative fiction. Truth, we must admit, is very boring. This is why CHAPTER 1 of this dissertation is boring. What excites us is almost always falsehood or a fiction. Indeed, the falsehoods of many recent commentators have

excited me to perform the task of refutation in CHAPTER 2.

52. K. Olivecrona's article, "Locke's Theory of Appropriation", The Philosophical Quarterly, Vol. 24, No. 96 (1974), contains the best exposition of Locke's account of appropriation available in English. I have corrected his Hegelian error in Appendix 3, Sect. (i). Olivecrona also mentions the Stoic maxim of justice ("suum cuique tribuere"), and takes note of its negative interpretation (ibid., pp. 222f.).

For G. Parry's exposition of Locke's account of appropriation, and his discussion of Locke's concept of justice, see John Locke (London: George Allen & Unwin, 1978), pp. 49 ff. and pp. 115 ff.

## **CHAPTER 3**

### **LOCKE'S CONCEPT OF PROPERTY:**

#### **A Critical and Historical Analysis**



## CHAPTER 3

### LOCKE'S CONCEPT OF PROPERTY:

#### A Critical and Historical Analysis

"Some gross and confused Conceptions Men indeed ordinarily have, to which they apply the common Words of their Language, and such a loose use of their words serves them well enough in their ordinary Discourses and Affairs. But this is not sufficient for philosophical Enquiries. Knowledge and Reasoning require precise determinate Ideas." (Essay, III, x, 22.)

The purpose of this chapter is to provide a critical and historical analysis of Locke's concept of property. In PART 1 of this chapter, I shall determine the meaning, or the strict sense, of "property" by separating it from various loose images Locke attached to it. In PART 2, I shall analyze Locke's concept of property. The word "concept" should be understood in a special sense here. By Locke's "concept" of property, I shall mean his understanding of how men and objects are related when an object is a particular man's "property" in the strict sense. My analysis in PART 2 presupposes the conclusion of PART 1, because Locke's "concept" of property presupposes the determinate, strict sense of the word "property".

In PART 1, I shall isolate the strict sense of "property" from Locke's loose images. By a careful reconstruction, I shall show that "property" in the strict sense is "an exclusive right of disposal", or the "object(s)" of this right. In Locke's view, such items as a man's life, liberty, and possessions (or his person and goods) can become the objects of his exclusive right of disposal. In PART 2, I shall present

a detailed analysis of Locke's understanding of how men and objects hang together when a man has "an exclusive right of disposal" over an object. This is an analysis of what it is for a man to have this peculiar right over an object; or what it is for an object to be a man's "property". Locke apparently treats the relationship of a man to his "property" as if it were a simple, two-term relationship. But in fact, this apparently simple relationship conceals a definite structure of Locke's concept of property. Its structure is ego-centric or agent-centred. I shall explain what this structure is. I shall thereby clarify and examine Locke's philosophical assumptions about the nature of the peculiar entity called "property", or "an exclusive right of disposal".

My discussion in this chapter deals with the minutest details of the sense(s) of "property", and the concept of property. It also tries to combine historical scholarship with philosophical criticism. To the best of my knowledge, nobody has offered a satisfactory analysis of Locke's concept of property yet. My analysis is the first major attempt in the whole history of Locke scholarship.

I have written Appendix 3 in order to supplement my analysis of the ego-centric structure of Locke's concept of property. This Appendix should be read in conjunction with PART 2 of this chapter. It surveys 20th-century scholars' inadequate understandings of the ego-centric structure of Locke's concept of property. It also tries to show that his concept of property is strongly ego-centric or agent-centred, in comparison with the concepts of property which other 17th-century theorists (Hobbes, Grotius, Pufendorf) formulated. See Appendix 3: Locke's Ego-Centric Concept of Property, with Special Reference to 20th-Century Commentators and 17th-century Theorists.

Before I proceed, I should like to make one cautionary remark. Questions about the strict meaning of the word "property" and the "concept" of property (in the way I defined the term "concept") are not the questions which Locke himself discussed in the Two Treatises. Those questions which I shall discuss below must be distinguished, above all, from questions about the historical or conjectural origin of property, or about the moral justification of the acquisition of property. The latter questions are relevant to Locke's account of appropriation in Chap. 5 of the Second Treatise. It is one thing to ask what the word "property" means, and what specific relationship of men and objects holds when a particular object is said to be someone's "property". But it is quite another thing to ask how men acquired (or could have acquired, or might have acquired) property, and whether there is any moral justification for the property so acquired. These are Locke's questions, which are certainly distinct from my questions in this chapter. The difference between Locke's questions and mine is plain. But it is worth stating that they are different because the answers to my questions must be extracted from Locke's text, and because intelligent Locke scholars have conflated questions about the meaning/concept of property and questions about the origin/justification of the acquisition of property. (For notable examples of this conflation, see my discussion on Milam, Yolton, and Tully in Appendix 2, Sect. II, (i), (ii) and (iii); also my comment on Olivecrona in Appendix 3, Sect. (i).)

## PART 1. Images and a Reconstruction of the Meaning

### 1.1 Images of "Property": Locke's Confused Imagination

"Another great abuse of Words is, Inconstancy in the use of them. It is hard to find a Discourse written of any Subject, especially of Controversie, wherein one shall not observe, if he read with attention, the same Words ... used sometimes for one Collection of simple Ideas, and sometimes for another, which is a perfect abuse of Language."  
(Essay, III, x, 5.)

Since the middle of the 18th century, philosophically acute critics have pointed out that a loose succession of images dominates Locke's account of appropriation. Francis Hutcheson commented on his account of appropriation, as one of the earliest critics: "The difficulties upon this subject arise from some confused imagination that property is some physical quality or relation produced by some action of men".<sup>1</sup> Before Hutcheson wrote this sentence, Hume had made a famous remark: "We cannot be said to join our labour to any thing but in a figurative sense. Properly speaking, we only make an alteration on it by our labour" (THN, 505f., n.). Both criticisms have one thing in common: Locke's account of appropriation suffers from an image, or a metaphor, about property. In fact, as Geraint Parry has recently pointed out, Locke is ready to exploit a number of incompatible images to defend the privacy and exclusiveness of property.<sup>2</sup>

Two images are particularly important: the image of property as a man's peculiar quality, and the image of joining this quality to an external object. Locke combines these images and gives

a metaphorical account of "appropriation". According to this metaphorical account, a man converts a portion of the external world into "his property" by joining his peculiar quality to that portion of the external world. This peculiar quality is called "something that is his own", and it is identified as "his property".

Locke's account of appropriation in Chapter 5 of the Second Treatise is loose and unphilosophical, to the extent that it relies on a succession of images associated with the idea of property. In what follows, I shall point out that Locke does rely on a loose succession of images, and fails to base his account of appropriation on a clear-cut, rigorous concept of property. His use of images must be detected, and it should be treated as unphilosophical. I shall criticize his unphilosophical, popular exploitation of images in order to distinguish what is frivolous in his discourse on property from what is more solid and philosophical. Later, I shall rescue the solid part. But for the moment, I shall try to show that Locke is guilty of the inconstant use of the word "property", and the "perfect abuse of Language". Locke's remark on "another great abuse of Words", quoted above, is true. It is, indeed, "hard to find a Discourse" "especially of Controversie", where we do not find the inconstant use of words.

Let us draw attention to the most famous, and most frequently cited, passage in the Second Treatise. This is the passage which has been always quoted by his commentators. It has been criticized on innumerable occasions by those who have subtler minds than Locke's. It even appears that the sole charm of this hundred-times-criticized passage lies in its obscurity, or the vanity of theorists who can seize upon any obscurity to show their superiority. I shall quote the passage in full, dividing it into four parts:

- (1) "Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This no Body has any Right to but himself.
- (2) "The Labour of his Body, and the Work of his Hands, we may say, are properly his.
- (3) "Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned to it something that is his own, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it, that excludes the common right of other Men.
- (4) "For this Labour being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joyned to, at least where there is enough, and as good left in common for others."

(ST, 27, quoted in full.)

Philosophically-minded critics in recent years have typically claimed that given (1) and (2), it does not logically follow that every man has a property in the external object with which he has mixed his labour.<sup>3</sup> A milder version of this criticism is that Locke does not present any good reason, in the passage quoted above, to show why a man's act of mixing his labour with a common object should justify his having a property in that object.<sup>4</sup> It is true that the conclusion does not deductively follow from (1) and (2). It is also true that the above passage contains no good reason for our ascription of a property right to the object with which a man has mixed his labour. However, I shall first identify what Locke is doing in writing the famous paragraph. He is not deducing the proposition about a particular right from the propositions about a prior right. Nor is he trying, in the above passage, to offer a closely reasoned argument to justify our ascription of a property right to the object with which a man has mixed his labour. What Locke is doing is simple. He is describing a specific, compact-

independent and injury-free, method of appropriation, and thereby claiming that there is a specific method of appropriation which does not depend on the explicit compact of all men and avoids injuring any other man. The primary objective of Locke's Chapter 5 is to show how each man comes to have a property in a definite portion of the God-given world of common things (independently of the explicit compact of all men and without injuring any other man). It is to show what is the specific method, or mode, of appropriation, i.e., of coming to have a property in the God-given world of common things. In the paragraph which immediately precedes the passage I have quoted, Locke states that since God has given the external world of common goods "for the use of Men", "there must of necessity be a means to appropriate them some way or other" (ST, 26). The main point of the quoted passage, therefore, is that a man's act of labour rather than anything else is the specific method of appropriation. This method of appropriation is independent of the universal, explicit compact. It also avoids causing injury to any other man, as long as "where there is enough, and as good left in common for others".

In trying to show that a man's act of labouring is the specific, compact-independent and injury-free, method of appropriation, Locke makes use of various images of "property". His use of various images appears as an ambiguous use of the word "property". Strictly speaking, to say that a man has a property in something means that a man has an exclusive right to dispose of it; and to say that something is a man's property means that it is the object of his exclusive right of disposal. (For this strict meaning, see my discussion below in 1. 2.) Nevertheless, Locke deviates from this strict meaning, and makes use of the images which suggest entirely different kinds of

privacy and exclusiveness. Let us see how this deviation takes place, by referring to the famous passage I have quoted in full.

Locke first equivocates when he asserts (2): the labour of a man's body, and the work of his hand, "we may say", are "properly his". The meaning of this sentence is ambiguous between (a) a man has an exclusive right to dispose of his labour-power, and (b) the labour-power and the operation of his hand belong to, or reside in, his body in an exclusive manner. The idea (b) is the idea of physical exclusion, which is in fact distinct from the idea of an exclusive right. Locke obviously thinks that each man's body is biologically separate from another man's body, and the working of his body is confined to a single body and inseparable from it. He says that nobody denies that a man's "nourishment is his", and strengthens the image of exclusiveness on the basis of physical intransmissibility (ST, 28). In claiming that the "nourishment" (or digestion) of apples is "his", Locke simply conflates the idea of physical exclusion with the idea of an exclusive right, i.e., the right whose object is not the object of another man's right. It is one thing to claim that nobody has a right to another man's body or his bodily function. But it is quite another to claim that the nourishment or digestion is the function of his body, given the normal biological function of a human body. One is a normative claim, whereas the other is a description of how a man's body normally works.<sup>5</sup>

The equivocation noted above is not very serious, given Locke's premise that every man has a property in his person. This premise entails that every man has a right to dispose of (i.e., control) his body to the exclusion of others. But there is another equivocation which is more seriously misleading. Locke claims, in (3) of the



quoted passage, that a man joins, or annexes, "something that is his own" to an external common object by the act of labouring. He elsewhere speaks of a man's annexation of "something that was his Property" (ST, 32). He also says that the "labour that was mine ... hath fixed my Property in" external goods (28). Thus according to Locke's usage, "something that is his own" is equivalent to (the object of) "his property". But the word "property" in this context is ambiguous because Locke associates "property" with the peculiar or distinctive quality of each man. What is "fixed" (or "annexed" or "joined") to an external common object is not so much the object of a man's exclusive right of disposal, as the peculiar quality which he possesses as a distinct individual. This is confirmed by the following redescription of a man's annexation of his "property" to external objects through labour:

That labour put a distinction between them and common. That added something to them more than Nature, the common Mother of all, had done; and so they became his private right (ST, 28).

What is this "something", which in Locke's view counts as a man's "property"? Various interpretations of this "something" are available. It can be a man's labour-power; or his industriousness and pains (34); or his "Invention and Arts" (44); and so forth. However we may interpret it, it is fairly clear that Locke associates "property" with some peculiar quality or power of each individual man insofar as he relies on the metaphor of "fixing" ("annexing", "joining", or "adding"). Up to a point, then, Locke's account of appropriation in Chapter 5 rests on the metaphorical idea that a man's act of "appropriating" the world (or coming to have "a property in" it) is an act of attaching his quality to a portion of the world by a quasi-chemical process of mixing his labour with it.

There seem to be several causes which induced Locke to adopt this metaphorical idea. First, the word "property" is often used in the sense of "quality", as we say that whiteness is the "property" of wax. Secondly, one of the older meanings of the word "appropriate" is "To allot, annex, or attach a thing to another as an appendage" (OED, "appropriate", 5). Thirdly, two of Locke's predecessors, Grotius and Pufendorf, conceived of "a right" as a man's moral "quality", and their talk about a "quality" probably strengthened the associative link between "property" and "quality".<sup>6</sup> Fourthly, it is customary for a man to "fix" his fence in a particular plot of land, or to "attach" his label to a book, in order to indicate or claim that the external object so marked is his property. These seem to be the main causes which induced Locke to use, uncritically and illegitimately, the metaphorical idea that "appropriation" is a man's act of annexing his peculiar quality to a portion of the external world.

Why is it illegitimate to use this metaphorical idea? This idea involves a shift in the meaning of the word "property". What Locke attempts to do in Chapter 5, strictly speaking, is to provide an account of how each man comes to have an exclusive right of disposal over a portion of the God-given world of common things. This follows from the strict meaning of "property" which I have already indicated (and also from the strict meaning of "appropriation" as coming to have an exclusive right of disposal over a portion of the external world). Locke's task, strictly speaking, is not to provide an account of how each man has "fixed" his peculiar (or distinctive, or exclusive) "quality" in a portion of the external world. Suppose that a man attaches his peculiar quality to external objects by the act of labouring, as Locke suggests. But it remains necessary to explain

why each man has, or should have, an exclusive right to dispose of this peculiar portion of the world. It is frivolous to claim that he has an exclusive right of disposal over this portion of the external world because he has fixed his peculiar quality in it by his labour i.e., because a man "hath by this labour something annexed to it, that excludes the common right of other Men" (ST, 27). This claim simply presupposes that if an external object embodies a peculiar quality of a man's own, this object counts as his "property" in the strict sense of the object of his exclusive right of disposal. Yet this presupposition itself needs justification, because the fixation of a peculiar personal quality in an external object has no conceptual link with a man's having a particular kind of right over the object. Why, one might ask, is it not the case that a man acquires a right of usufruct to the object rather than an exclusive right of disposal over it? And why is it not the case that a man loses his peculiar quality (e.g., his sweat) in the vast ocean of natural products without ever acquiring an exclusive right of disposal? By insisting that a man has "fixed" his "property" in external goods, Locke merely avoids answering these questions. Insofar as he relies on the metaphor of "fixing" ("joining", "annexing", or "adding"), the metaphor makes it superfluous to explain why a man should have a particular right over the peculiarly transformed object.

It is futile to appeal to the metaphor where an argument is needed. Locke might wish to convey the image that the peculiarly transformed object assumes the "colour" of a man's distinctive quality, or it "embodies" that quality. But it is very easy to discredit Locke's use of this image. We can use this image in a number of ways, even to dis-justify a man's exclusive right of disposal over the

peculiarly transformed object. For example, we can say: since the peculiarly transformed object is a faint copy of a man's original peculiar quality, he only has a right to share the object with other men, or a right to borrow it from the creator of the previously common object. I do not intend this to be an argument, but it is a metaphor which is at least as good as the metaphor of "fixing" his "property" in external objects. My point is that Locke's fixing metaphor cannot substitute an argument which defends the claim that a man should have an exclusive right of disposal over the goods which he has transformed by his labour.

There is no denying that Locke tries to defend this claim in Chapter 5 of the Second Treatise in a variety of ways. One line of defence is to argue that a man should have an exclusive right of disposal over the laboured-on objects, because his labour involves great efforts (i.e., "pains") which ought to be rewarded (ST, 30, 34, et passim). Another line of defence Locke takes is that a system of exclusive rights of disposal, based on each man's labour, improves the general standard of life for all (37). These and other justificatory arguments can be extracted from Locke's account of appropriation, and they can be spelled out independently of his use of the fixing metaphor. Thus it is wrong to say that his account of appropriation consists solely of his fixing metaphor and equivocation. However, it is equally wrong to deny that Locke also relies on the metaphor in the famous passage (ST, 27) and other places. His use of loose images, and his equivocation, are what I have criticized above.

When Locke confidently claims that the "labour that was mine ... hath fixed my Property in them" (28), he writes as a victim of what Hume calls "the frivolous propensity of the imagination" (THS,

224). Our mind, Hume warns us, has "a great propensity to spread itself on external objects" (THS, 167); and children, poets, and peripatetic philosophers do not take the trouble to restrain their propensity to project their emotions onto external objects (THS, 224f.). In parallel fashion, Locke's labourer spreads the image of "property" - his peculiar quality - upon external objects. And Locke himself does forget, from time to time, to restrain his propensity to conflate the image of property and the meaning of property, a labourer's act of spreading his quality over external objects and his coming to have an exclusive right of disposal over those objects. This sort of conflation is pardonable in certain cases. As Hume put it, we must "pardon children, because of their age" and "poets" because of their profession to follow "the suggestions of their fancy" (THS, 225). Yet if philosophers cannot restrain their propensity to follow the suggestions of their fancy, it is their fatal weakness. "But what excuse shall we find to justify our philosophers in so signal a weakness?" (THS, 225.) This is Hume's remark on peripatetic philosophers who passionately talked about the sympathies, antipathies and horrors of a vacuum. Mutatis mutandis, this remark applies to Locke's popular exploitation of images in his account of appropriation.

Without overemphasizing Locke's weakness, his vulnerability to conflate the image of property and the meaning of property, I should like to conclude that Locke's account of appropriation does rest, up to a certain point, on his unphilosophical exploitation of images. The criticism, made by Hutcheson and Hume long ago, is valid. Yet Locke is not entirely an unfortunate victim of "the frivolous property of the imagination". Since I have exposed the frivolous

part of Locke's account of appropriation, I shall move on to discuss the more solid part of his discourse on property. In the following section (1.2 below), I shall reconstruct the meaning of "property". The meaning, or the strict meaning, of "property" is my reconstruction, to the extent that I deliberately purge Locke of his loose images. I shall simply discard Locke's loose images and treat them as if they were non-existent. But the following discussion is not arbitrary, since I shall try to determine what Locke meant by "property" by considering what he said in the whole of the Second Treatise rather than a few sentences of Chapter 5. It will turn out that Locke, on the whole, knew what he was talking about when he used the word "property".

## 1.2 A Reconstruction of the Meaning of "Property"

"Though in the continuation of a Discourse or the pursuit of an Argument, there be hardly room to digress into a particular Definition, as often as a Man varies the significance of any Term; yet the import of the Discourse will, for the most part, if there be no designed fallacy, sufficiently lead candid and intelligent Readers, into the true meaning of it: but where that is not sufficient to guide the Reader, there it concerns the Writer to explain his meaning, and shew in what sense he there uses that Term." (Essay, III, xi, 27.)

The passage quoted above contains Locke's considered judgement about how an author should convey the "true meaning" of his discourse,

and remedy his vulnerability to the imperfection and abuse of words. In writing the Second Treatise, a discourse on property and government, Locke does indeed try to convey its true meaning by occasionally explaining the sense in which he uses the term "property". He says he intends to use the word "Property" as a "general Name" for men's "Lives, Liberties and Estates" (ST, 123), or to refer to "that Property which Men have in their Persons as well as Goods" (173). This remark is intended to help intelligent readers grasp the "true meaning" of the whole discourse on property and government. But the remark baffles us. Does the word "property" mean "lives, liberties, and estates"? Is this a broader sense of "property" whereas there is another sense of "property" as "estates" or "possessions"? We must settle our initial questions in order to reconstruct the meaning of "property" successfully.

We should distinguish between the "internal" use of a word and the "external" meaning of the word. Locke uses the word "property" as a general name for men's lives, liberties and estates within his discourse, and this particular use is dictated by the purpose of the discourse. This is the "internal" use of the word "property", and the purpose of Locke's discourse in the Second Treatise (its "true meaning" or "import") is to establish claims against any arbitrary governmental power over men's lives, liberties and estates, and advance claims for the government which legally protects men's lives, liberties and estates. But since Locke uses the word "property" in order to write a discourse for a particular purpose, he can be said to know the meaning of the word "property" independently of the discourse he himself wrote. This meaning is the "external" meaning of the word "property". This "external" meaning is what I intend to

reconstruct. This meaning, properly reconstructed, is this:

"property" means either a man's exclusive right of disposal, or any object of this right. In the Essay, Locke defines "property" as "a right to any thing", "injustice" as "the Invasion or Violation of that right"; he thereby claims that the proposition "Where there is no Property, there is no Injustice" is a moral proposition capable of demonstration (Essay, IV, iii, 18). The definition of "property" as "a right to any thing" is a simplified definition of the external meaning of "property", i.e., a simplification of "an exclusive right of disposal".

Once we distinguish the internal use of the word "property" from its external meaning, we do not need to trouble ourselves with the question whether "property" means a man's "life, liberty, and possessions". It is permissible to say that given Locke's discourse on property and government in the Second Treatise, "property" is or "means" a man's "life, liberty, and possessions" (or men's "lives, liberties, and possessions (or estates)"). Strictly speaking, however, this is Locke's use of the word "property" for the purpose of his discourse. It is his "internal" use. From the viewpoint of the "external" meaning of the word "property", what Locke does in the Second Treatise is the following. Throughout the Second Treatise, Locke puts forward a summary of his substantive claim that certain objects count as one's property. For instance, when he states that men's "Lives, Liberties and Estates ... I call by the general Name, Property" (ST, 123), he is claiming that those objects count as "property" given the independent meaning of "property". 17th-century social philosophers - Hobbes, Grotius, Pufendorf, et al - claimed that certain objects, material and immaterial, are our "own" objects.



They enumerated the objects which they took to be our "own", either by nature or by convention.<sup>7</sup> Locke similarly enumerates a man's "own" objects in the Second Treatise, by explaining his internal use of the word "property", or by simply using the phrase "life, liberty, and possessions" in place of the word "property".

It is customary for scholars and commentators to distinguish between Locke's "broad" and "narrow" sense of "property". According to this customary division, property in the "broad" sense refers to one's "life, liberty, and possessions (or estate)" whereas property in the "narrow" sense refers to one's "possessions" (or "estate") alone. It is also customarily observed that "property" means one's right over one's life, liberty and possessions on the one hand, and one's right over one's possessions on the other hand. The customary division of this sort is based on the false assumption that Locke only speaks about "property" in the "narrow" sense in Chapter 5 of the Second Treatise, "Of Property". But he certainly claims in Chapter 5 that "every man has a Property in his own Person" (27). The customary division drawn by 20th-century commentators is useful only because it serves to prevent our confusion. It is of no use to our understanding of Locke's internal use of the word "property", or his external meaning of it.<sup>8</sup> The so-called two "senses" of property have nothing to do with the internal use Locke explained, or the external meaning he presupposed. Furthermore, the currently popular two-sense doctrine of "property" ascribes to Locke the view that he "extended" our ordinary sense of property (i.e., "property" as a man's possessions) to encompass such objects as a man's "life and liberty". This is to put the matter upside down.<sup>9</sup> For Locke, a man's "life and liberty" (and also his minimal possessions, or the possessions required for his self-preservation) count as his "property" from the beginning (ST, 6).

Locke shows in Chapter 5 how each man's exclusive private domain, consisting of his "life and liberty" or his "person", comes to be enlarged to incorporate external possessions. A man's possessions increase over time, according to Locke's account of appropriation. So what he means by "possessions" in Chapter 2 of the Second Treatise differs from what he means by "possessions" in or after Chapter 5. But throughout the Second Treatise, a man's life, liberty and possessions are claimed to constitute his "property". This is sufficient to show that it is wrong to attempt to understand Locke's internal use, or his external meaning, of "property" by means of the two-sense doctrine.

These are preliminary remarks which settle our initial questions. In what follows, I shall reconstruct what I have called the "external" meaning of "property". If each man's "life, liberty, and possessions" count as his "property", then the word "property" has a meaning independent of its referents such as "life", "liberty", and "possessions". The easiest way to explain this independent meaning is to replace the word "property" by some other expressions Locke uses. So I shall begin by picking out his equivalent expressions. The following discussion will also show the way in which Locke uses his external meaning internally.

#### 1. 21 The Meaning of "Property": An Enlarged View

Locke uses various expressions to indicate the external meaning of the word "property". A man's "property" is "a part of him, that another can no longer have any right to" (ST, 26). It is what is "properly his", or "something that is his own" (27). Or it

is "something" that is "his own", such that "another ha[s] no Title to" it (32). Or it is that which "another can [not] by right take ... [as] he pleases" or against the owner's "consent" (138). From these we can infer that "property" means what is one's "own", where this ownness implies that no other man has a right to it (without the consent of the owner). To put it formally:

X is A's property = X is A's own, so that no other man has a right to X (without A's consent).

The crucial point is that if X is A's property or A's own, then it implies that no other man has "a right to" X, i.e., a right to take or use X. The exclusiveness of someone's property is a part of the meaning of an object's being his "property". Locke comments on the education of children, and states that they should "form distinct notions of property" and "know what is theirs by a peculiar right exclusive of others" (Some Thoughts concerning Education, Works, IX, 101). Thus "X is A's property" means: X is what is A's by a peculiar right exclusive of others.

As we have seen, Locke claims that each man's life, liberty, and possessions are his "property". This means that each man's life, liberty and possessions are his "own", implying that no other man has a right to them. If each man's life (hence, his body) is his own, then the labour-power of his body is also his own. This is why Locke says that the "Labour of his Body, and the Work of his Hands, we may say, are properly his" (ST, 27).

The locution of the form "X is A's property" is only one of the locutions Locke employs in talking about property. This locution may be called Locution P (P for property). Another important locution is of the following type: "A has a property in X". To cite examples:

Every man has "a Property in" "his own Person" (27). Men might "come to have" "a property in" "several parts of that which God gave to Mankind in common" (25). "He that gathered a Hundred Bushels of Acorns or Apples, had thereby a Property in them" (46). Instead of saying that men's lives, liberties and possessions are their "property", Locke says:

By Property I must be understood here, as in other places, to mean that Property which Men have in their Persons as well as Goods (173, emphasis added).

The sentences I have cited have one common feature: the word "property" is followed by "in". I shall call this locution Locution PI (P for property, and I for in). Locution PI is more legalistic than Locution P. It is based on the legalistic way of dividing all entities into persons and things. "X" (in "A has a property in X") ranges over A's person, or a definite portion of external goods, or both. But it does not range over any other kind of entity. For this reason, we can establish the relationship between Locution P and Locution PI as follows.

A has "a property in" his person and goods.	=	A's life, liberty, and possessions are his "property".
A has "a property in" his goods.	=	A's possessions are his "property".
A has "a property in" his person.	=	A's life and liberty are his "property".

The first equation clearly holds because as I have quoted already, Locke calls "lives, liberties, and estates" "by the general Name, Property" on the one hand, whereas he says that the general meaning of "property" is "that Property which Men have in their Persons as well as Goods". The second equation obviously holds. Hence, the third equation follows. To say that every man has "a property in" his

person means that his life and liberty are his "property".

The expression "a property in" can be replaced by "an exclusive right of disposal over" or "an exclusive right to dispose of". It is an exclusive right in the sense that if A has "a property in X", no other man has a right to use or take X (without A's consent). This is fairly clear from what I have said about Locution P. But let us confirm it. Locke says: "every Man has a Property in his own Person. This [i.e., his own person] no Body has any Right to but himself" (ST, 27). He rephrases "a property in" things as "a private Dominion, exclusive of the rest of Mankind, in" them (26). He also paraphrases the proposition that every man has a property in his person in the following way:

Every Man is born with ... a Right: ... A Right of Freedom to his Person, which no other Man has a Power over, but the free Disposal of it lies in himself (190).

From these we can conclude that it is legitimate to translate "a property in" into "an exclusive right of disposal over" or "an exclusive right to dispose of".

We are now in a position to break the barrier between Locution P and Locution PI. "A has a property in X" means "A has an exclusive right of disposal over X", and "X" is A's person or a definite portion of external goods. "Y is A's property (or A's own)" means "A has an exclusive right of disposal over Y", and "Y" is paradigmatically A's life, liberty, or possessions. A's life includes A's labour, health, and limb. A's possessions include A's estate, but typically "A's possessions" is synonymous with "A's estate" according to Locke. What is common to the two locutions concerning "property" is the idea that A has an exclusive right to dispose of "his" "objects", whether those

"objects" are material or not. Those objects are identifiable as "his", and this identification is presumably possible independently of our identification of them as "his property". The word "property", as Locke uses it, refers to any (material or immaterial) object of each man's exclusive right of disposal. Or else, it refers to his exclusive right of disposal itself.

There are two problematic notions which require brief comments. First, "disposal" can mean a number of things. But in Locke's view, it can be replaced by "control" or "arrangement", where "control" or "arrangement" is taken to include "transfer". (For a detailed discussion of "disposal", see my discussion in 2. 22 (A).). Secondly, a man's "person" refers to any of his "objects" except his possessions (or his estate, or his goods). Given the trinity of a man's "life, liberty, and possessions", and the comparison of Locution PI and Locution P, his "person" paradigmatically refers to his "life and liberty". This interpretation of the meaning of his "person" will be justified in the following section.

## 1. 22 The Meaning of "a Property in his Person": A Local View

In this section I shall give additional considerations to Locke's proposition that "every man has a property in his own person". In the previous section, I have suggested that this proposition can be translated into another sentence, "every man has an exclusive right to dispose of his life and liberty". I do not hold that this is the only acceptable translation. We could also say that every man has an exclusive right to dispose of his body and his actions. As I said before, Locution PI (having "a property in" X) is based on the legalistic division of entities into persons and things. So Locke

does not say that a man has "a property in" his actions. Nevertheless, he describes man as "Proprietor of his own Person, and the Actions or Labour of it" (ST, 44). So we may as well render "a property in his person" as "an exclusive right to dispose of his body (or his life) and his actions". (The term "action", however, is an elusive one in the Second Treatise.<sup>10</sup>)

I shall argue below that we should, indeed, understand Locke's proposition about "a property in his own person" by the method of translation I have proposed. There are false alternatives we should reject. We must reject at the outset J.P. Day's claim that Locke's proposition is simply non-sensical. Day points out (correctly) that the language of ownership is grammatically "irreflexive", and argues (falsely) that Locke's proposition is just as nonsensical as the proposition of the form "A owns A". He says that the sentence "every man has a property in his own person" is just as nonsensical as "Fido owns Fido, this dog owns this dog", and the like.<sup>11</sup> Here we must note that it is not Locke but Day, the "linguistic" philosopher par excellence, who is talking nonsense. Locke does not hold the view that the language of ownership or property is strictly reflexive; this is why he says that every man has a property in his person. Nor did Locke have time to engage in a childish language-game when he was alive; his "person" was in danger when he was in exile. What Locke does in the Second Treatise is not to play the childish language-game of the Oxford origin (i.e., "Fido owns Fido"), but to play the legal language-game of the 17th-century natural-law tradition.

The 17th-century discourse on natural law and natural rights employs a predominantly legal vocabulary. Since Locke regarded Pufendorf's De Jure Naturae et Gentium as "the best book" on natural law and natural rights (Works, III, 296), we should briefly look at a

part of Pufendorf's complex classification of legal (or moral) entities. Pufendorf classifies "powers" into different groups. One way of classifying "powers" – the "powers" man has, according to Pufendorf, are virtually indistinguishable from his "rights" – is to classify them according to the "objects" of powers. He says:

with regard to objects, most kinds of power can be classified into four groups. For powers concern either persons or things, and both these according as they are one's own or another's (De Jure Naturae [A], 1, 1, 19).

Pufendorf's four kinds of power are: power over one's own person (and actions), power over one's own things, power over the persons of other men, and power over the things of other men. He gives four names to these powers: "liberty", "ownership", "command" and "easement" (1, 1, 19). The idea underlying this classification is that each man has two basic entities, his person and his things. These are the two basic entities which each man has a power, or a right, to dispose of.

Locke inherits Pufendorf's legalistic division of a man's entities into his person and his things. What is important about his use of the word "person" in the Second Treatise, however, is that he uses the word simply because the Second Treatise is a legal, or at least quasi-legal, discourse. The word "person" is a legal term. As Locke puts it, it is "a Forensick Term" which is applicable "only to intelligent Agents capable of a Law" (Essay, II, xxvii, 26). The substantive meaning of this "forensic term" can be determined, if it can be determined at all, not by our effort to discover what entity this "person" is, but by the substantive legal theory which constitutes this entity. It is futile to engage in some wild speculation as to whether Locke's term "person" in the Second Treatise should be taken to refer to this or that personal quality, or what



attributes constitute personhood, over and above Locke's substantive legal discourse. Locke constantly puts a man's person in contrast with a man's things (or a man's possessions): e.g., "... dispose of their [i.e., men's] Possessions, and Persons" (ST, 4); "dispose of his [i.e., a man's] Person or Possessions" (6); "By the same Act ... whereby any one unites his Person ... to any Commonwealth ... he unites his Possession" (120); every man is a "Lord of his own Person and Possessions" (123); the conqueror who has a right over "a Man's Person" does not thereby have a right over "his Estate" (182).

Like Pufendorf, Locke speaks of the person of a man in contrast with the thing of a man. He holds that it is intelligible to speak of a man as having a right to dispose of his person as well as his things. Yet Locke does not reify the entity called "person" beyond his substantive legal discourse. When he says that every man has "a property in" "his own person", he simply adopts the legalistic manner of writing. Its substantive meaning, or the referent of the "person" of a man, can only be determined by the matter of his discourse rather than its manner. Given the matter of Locke's legalistic theory of the Second Treatise, we can say that the "person" of a man refers to his "life and liberty", or his body and actions.

I believe that this nominalistic interpretation of Locke's talk about "person" is correct. There is another line of interpretation provided by John Yolton and James Tully. Yolton has suggested the following: "The concept of person is fundamental for ... rightful appropriation". Just as Locke says in the Essay "we own our actions", he claims in the Second Treatise that "we own our persons" or "every man has a Property in his own person".<sup>12</sup> Yolton's parallelism between "owning" actions and "owning" persons is false, because Locke

never speaks of a man as "owning" his person in the Second Treatise. Tully, however, takes Yolton's parallelism seriously, and links Locke's discussion of personal identity in the Essay with the idea of having "a property in his own person". By taking a long, dubious route, Tully reaches an irrelevant conclusion: "the identity of a person is consciousness of thought and action, and the thought and action are his workmanship"; ergo, every man has a property in his person.<sup>13</sup> Both Yolton and Tully are misguided. They are simply misguided by a caprice of the English language. What Locke actually says in the Essay is that the same person is the being who "appropriate[es] Actions and their Merit", and "owns and imputes to it self past Actions" (II, xxvii, 26). The word "own" in this context simply means the following: "To acknowledge (something) in relation to oneself" (OED, "own", 5), or "To acknowledge as due to oneself, to hold as deserved or merited" (OED, "own", 6b). It has nothing whatsoever to do with the meaning of "property" in the sentence, "every man has a Property in his own person".

Contra Yolton and Tully, I maintain that "the concept of person" is utterly insignificant for Locke's Second Treatise. What is significant is his concept of man as the "proprietor" of his person. It is not a person who disposes of a man; it is a man who disposes of his person.<sup>14</sup> To repeat, Locke uses the word "person" merely as a "forensic" term in the Second Treatise. This use is conspicuous in Chapter 16 ("Of Conquest") where Locke contrasts "the Persons of the Conquered" with the estates of the conquered (193), or in Chapter 18 ("Of Tyranny") where he discusses a king's legal status ("the Person of the Prince" (205), or "the King's Person" (206)). Locke's suggestion that "person" is a forensic term must be taken with caution,

however. Although he consistently uses the word as a forensic term in the Second Treatise, he himself fails to do so in the Essay. When he discusses "personal identity" in the Essay, he states: "Person stands for ... a thinking intelligent Being, that has reason and reflection [etc.]" (Essay, II, xxvii, 9). This statement betrays his own suggestion that the word "person" is a forensic term. As an anonymous critic pointed out long ago, if Locke were to use the word strictly as a forensic term, he would have to state à la Cicero that the word stands for the character or legal mask of an intelligent being rather than an intelligent being itself. (For the anonymous critic's learned comments, see "Appendix to Defence of Mr. Locke's Opinion concerning Personal Identity", Works, III, 199-201.)

I shall now clear up altogether the muddled thinking of Yolton and Tully, and Locke's additional confusion. In the Essay, Locke does not use the word "person" as a forensic term though he himself suggests that it is "a forensic term". But in the Second Treatise, he simply follows the conventionally legalistic manner of writing, and consequently uses the word "person" as "a forensic term". As far as Locke's proposition "every man has a property in his own person" is concerned, it substantively means the following: every man has an exclusive right to dispose of his life and liberty (or his body and actions; or his life, health, limb and labour). The crucial verb for Locke's concept of property is not "to own", as Yolton and Tully assume. It is "to dispose (of)", meaning "control" or "arrange".

#### 1. 23 A Reconstruction Completed: An Overall View

We can state the conclusion of our discussions in 1. 21 and

1. 22 very briefly. "Property" means (externally) an exclusive right of disposal, or the object over which a man has the exclusive right of disposal. According to Locke's (internal) use of the word "property", a man has an exclusive right of disposal over the following objects: his person (i.e., his life, health, limb, and liberty; or his body, actions, and labour), and his goods (i.e., his possessions or estate).

## PART 2      An Analysis of Locke's Concept of Property

In PART 2 I shall analyze Locke's concept of property. By his "concept" of property, I shall mean his understanding of how men and objects are related when a particular object is said to be a man's "property" in the strict sense of the word. According to the strict meaning of "property" which I have reconstructed in PART 1, if a man's person or possessions are his "property", it means that those objects are the objects of his "exclusive right of disposal". So we can say, at the simplest level, that a man in this case is related to his objects by his "exclusive right of disposal". As long as we treat a man's exclusive right of disposal" as a single peculiar entity, we can represent the structure of Locke's concept of property by the simple two-term relationship. In fact, Locke himself uses this representation frequently. A man is related to his person or things, by having "a property in" them. What I attempt to do below is to analyze this simple representation of Locke's concept of property, and show that he arranges men and objects in a definite, though complicated, way when he says that a man has a property in his person or things.

The primary purpose of my analysis is to clarify Locke's philosophical assumptions about "property", or "an exclusive right of disposal". In order to facilitate the clarificatory task and make it valuable, I shall also give some historical and critical considerations in the course of my exposition. Locke's philosophical assumptions are eo ipso what he took for granted rather than what he tried to explain. Hence, my analysis is reconstructive. I shall trace a complex web of ideas, in order to explain the specific arrangement of men and objects which Locke calls a man's "property in" his objects. This specific

arrangement or concatenation may be called the structure of property, and insofar as we can find this structure in Locke's thought, it may be called the structure of his concept of property. Since my analysis deals with a complex web of ideas which can be found in the Second Treatise, the Essay, and other works, I shall begin by outlining what I take to be the structure of Locke's concept of property. I shall call this structure "ego-centric" or "agent-centred".

## 2. 1 The Ego-Centric Structure of Property: An Outline

The ego-centric concept, or the agent-centred concept, of property may be initially explained by reference to a superficially similar, yet deeply opposed, concept of property. Whether property presupposes the existence of an ego or not, there is a concept of property which takes the existence of other men very seriously. Critics of the institution of private property frequently claim that property is "a right to exclude others". Property, conceived as a right to exclude others, is a right against other men by virtue of which a man can effectively use, or possess, or control his objects. This is not Locke's concept. Commentators on Locke, like Macpherson and Tully, mistake this other-directed concept for Locke's own concept of property.<sup>15</sup> Let us consider the situation where a man has "an exclusive right of disposal" over his objects (e.g., his body, actions, possessions, etc.). As I indicated in section 1. 21 above, the epithet "exclusive" serves to show that no other man has "a right to" the objects of his right of disposal. A man's exclusive right of disposal over X is not his right to exclude any other man from his disposal of X, but his right to dispose of X to the exclusion of the

right of any other man to X. To say that X is A's property means that A has a right to dispose of X such that no other man has "a right to" X. The given situation can then be analyzed into two relations: A's having a right of disposal over X, and nobody else's having a right to X. Locke considers the latter relation to be a peculiar nature of A's right of disposal over X. But we can best outline the ego-centric structure of his concept of property by treating the two relations separately. I shall separate them, keeping in mind that a man's "property" for Locke is a conglomeration of these two relations and the entities involved (a man, a right of disposal, his objects, the right of other men).

The core of Locke's concept of property is the view that a man has "a right of disposal" over his objects. If we add to this core the view that no other man has "a right to" his objects, we acquire Locke's concept of property. Locke's idea of a right being "exclusive" is parasitic on the core of his concept of property, since his point about an "exclusive" right is that the objects of a man's right of disposal solely belong to him, or he is the sole legitimate disposer of those objects. Though the idea of exclusiveness is an indispensable part of Locke's concept of property, it is only a layer added to the core notion that a man has "a right of disposal" over his objects. In speaking of the "core" and its additional "layer", I am deliberately using the spatial metaphors. The way Locke arranges men and objects to form a concept of property is predominantly spatial, and it can be best captured by a conscious use of spatial metaphors.

I now outline the structure of Locke's concept of property by first looking at its core, and then turning to its fringe. Its structure is called "ego-centric" or "agent-centred", because Locke

takes the mind of each man - the "agent" in the proper sense of the word - as the indispensable, constitutive element of each man's "property". Locke conceives of a man's "property" by linking his objects and other men ultimately to this central decision-making agent.

First, the core of Locke's concept of property is structured as follows. He understands a man's right to dispose of his objects in terms of his liberty (i.e., power) to dispose of them within the bounds of the laws he is under. A liberty to dispose of his objects is a non-normative liberty of action concerning the disposal (i.e., control or arrangement) of his objects, whereas the legitimate sphere of his actions is delimited by the laws binding on him. Since a man's non-normative liberty of action is his power, or ability, to do or forbear from doing any particular action according to the direction of his mind, his "right of disposal" over X is his power, or ability, to do or forbear from doing any particular action concerning the disposal of X, within the bounds of the laws. As we shall see later, the legitimate sphere of actions delimited by the laws is minimally fixed by the criterion of the avoidance of injury to other men. We shall also see that Locke ambiguously links a man's non-normative liberty (i.e., his power or ability) to the norms laid down by a law-maker. Leaving the details aside, however, we should note that the core of Locke's concept of property can be represented as follows: a man can control or arrange his objects according to the direction of his mind (i.e., his rational will), provided that he does not injure other men. This core is an extension of the idea that a man can move his hand if he so chooses, and he can stop moving it if he so chooses. The idea is extended to the idea of a man's ability to control the objects external



to his body (e.g., apples, a plot of land), according to the direction of his mind. This ability of each man is further linked to the norm of not injuring other men, which is the minimal norm of all laws. It is also each man's mind, or its power of "understanding", which enables him to understand the bounds of the laws he is under. Thus the mind of each man remains the most important entity that constitutes the core of Locke's concept of property, or the sphere of a man's right of disposal.

Secondly, each man's legitimate sphere of disposal can be said to be "exclusive" in the sense that no other man has "a right to" the objects within his legitimate sphere of disposal. Another man's "right to" those objects, in contrast with each man's "property in" them, is his rightful claim to the use of those objects. Paradigmatically, it is the "common right" which everyone other than the holder of the right of disposal may direct to those definite objects. The common right as such is everyone's rightful claim to the use of an indefinite object as his due, or his right of access to an indefinite object as his due. A's right of disposal over X can be said to be "exclusive" in the sense that no other man has this right, or any other rightful claim, to X. Due to the absence of any rightful claim on the part of all men other than A, A is the sole legitimate disposer (i.e., controller or arranger) of his objects. Other men may exist outside the legitimate sphere of A's disposal, but they may not. But A can imagine others to exist just as Robinson Crusoe imagines others to exist. This concept in any case does not presuppose the real existence of other men. It is an ego-centric concept in a full-blooded sense. Locke's concept remains coherent even if other men exist only in the imagination of the legitimate disposer. Finally, the agent who is

the legitimate disposer of his objects has a power to permit others to use his objects if he so chooses. This suspension of exclusion emanates from the act of his free will, or his consent. This, again, is the act of his mind.

The ego-centric structure of Locke's concept of property is "Cartesian" in spirit, in that the mind of each man is the most important element in the whole constellation of entities which make up a man's "property". It is true that Locke's view on the relationship between a body and a mind is un-Cartesian. He holds that matter might think, and even suggests that the mind can be spatially located. Locke is not committed to the metaphysical view that the mind exists as a mental substance outside the material world. Instead, he holds the moderately sceptical view that the mind is probably a mental substance.<sup>16</sup> But despite his un-Cartesian view of the mind-body relationship, Locke is Cartesian in spirit when he treats the mind rather than the body as the truly active being in man. In the Essay Locke claims that "man" is the "agent" who holds powers (of understanding and will) together, and exercises them as he thinks fit, rather than the patient who is at the mercy of the powers outside him. When he advances this claim, what he calls "man" is simply another name for his "mind". "[A]ll different Powers", says Locke, are held together "in the Mind, or in the Man", so that it is the mind or the man who "exterts them as he thinks fit" (Essay, II, xxi, 18). Whether a man dances or sings, it is "the Mind that operates, and exerts these Powers; it is the Man that does the Action, it is the Agent that has power" (Ibid.). Locke inquires into the difficult question concerning what determines the will, i.e., what determines "the general power of directing, to this or that particular

direction" (II, xxi, 29). His answer, though complicated, ultimately affirms his fundamental position that it is "the mind" or "the Agent it self" that determines the operation of the will.<sup>17</sup> It is this "mind" which is located at the centre of the whole conglomeration of entities making up a man's "property", or his "exclusive right of disposal" over his objects.

The ego-centric structure of Locke's concept of property can be summarily expressed by a new version of Descartes' maxim, cogito ergo sum. We can replace "sum" by "meum", and say – in awkward Latin – that cogito ergo meum. (A normal Latin sentence would run as follows: cogito ergo meum id est.) By adapting Descartes' maxim to represent the structure of Locke's concept of property, I do not mean to suggest that an external good becomes a man's "property" by thinking. Nothing is further from my intention to suggest this un-Lockean idea. As everyone knows, Locke holds that an external good becomes a man's "property" by his "labour" (at least, in the beginning of the world). As far as a man's appropriation of external goods is concerned, Locke's true maxim is laboro ergo meum id est. The somewhat awkward Latin sentence, cogito ergo meum, is intended to capture the structure of Locke's concept of property, rather than his view of how a man acquires external goods and makes them his "property". Regardless of the manner by which external goods become a man's "property", if any object (an external good, or any internal object – a man's body, actions, labour, limb, or health) is to be called his "property", then it must be presupposed that a man exists as a thinking being. Locke's concept of property collapses if we remove a man's mind from the conglomeration of entities which he calls a man's "property". If we remove the mind,

then we remove the central decision-making agent which is the presupposition of a man's liberty of action. If a man's liberty of action is impossible, then his liberty to dispose of his objects is also impossible. If his liberty of disposal is impossible, then his right of disposal is impossible because this "right" is nothing but his liberty plus the normative bounds of his actions. Hence by removing the mind, we remove the core of Locke's concept of property, i.e., a man's right to dispose of his objects. In order to call an object a man's "property" in Locke's strict sense, we must presuppose that each man has the mind capable of directing and organizing his affairs. Such a mind is the necessary condition for the coherence of Locke's concept of property. In this sense, we can attribute to him the new version of Descartes' maxim, cogito ergo meum (id est), without implying that physically demanding labour is not required for appropriation.

In what follows I shall elaborate the ego-centric structure of Locke's concept of property which I have outlined above. The points I have made above will be defended, elaborated, and qualified on the basis of a careful reading of the writings of Locke and other 17th-century theorists. The analysis I intend to offer is unprecedented in the whole 20th-century literature on Locke, as far as I am aware.

I should like to warn the reader at this point that the following analysis is very long and detailed. It is somewhat pedantic, though I hope it is also accurate and perceptive. I shall begin by elucidating the core of Locke's ego-centric concept of property (Sect. 2. 2, pp. 250ff.). Then I shall move on to clarify the fringe of his ego-centric concept (Sect. 2. 3, pp. 302ff.). At the end, I shall add general concluding remarks to suggest that we should abandon Locke's concept of property.

## 2. 2      The Core of Locke's Ego- Centric Concept;      or a Man's Right of Disposal

Now we shall try to clarify the core of Locke's concept of property, by isolating it from its fringe and analyzing it. Since Locke does not analyze his concept of property in the Second Treatise and his account of appropriation in Chapter 5 simply makes use of the unanalyzed concept of property, the following discussion is bound to be reconstructive. I shall proceed as carefully as possible, and I shall respect what Locke actually says as much as possible.

I must state at the outset that I shall introduce a new locution Locke employs in the Second Treatise. This locution, used in Chapters 2 and 6 rather than in Chapter 5 of the book, is a complex and compressed locution which explains what it is for a man to have a right to dispose of his objects. I shall call this locution Locution LL, for the reason that it combines the concept of (positive) "liberty" and the concept of "law". It takes the following form: "A has a liberty to dispose of X according to his will, within the bounds (or permission) of the laws he is under" (ST, 57, 58, 59; also, 4). This locution is descriptive of what it means to say that A has a right to dispose of X. Locke haphazardly lists the items or objects which fill "X" of Locution LL: "his Person, Actions, Possessions" (57) or "his Actions and Possessions" (59). Unlike Locution PI which is strictly based on the division of all entities into a man's person and a man's things, the term "actions" appears as one of the disposable objects. Locke's use of the term "actions" is confusing, however. He also uses it to refer to the manifest result of an agent's execution of his decision concerning what he will do with his "person", or his "actions",

or his "possessions". In this latter sense of "actions", Locke speaks of the regulation of his "Actions" (58), or a man's capacity to "keep his Actions within the Bounds of" a law (59).

The word "a liberty" of Locution LL is a positive liberty. It is a "power". Locution LL indicates that a man has a power to dispose of his "objects" within the normative constraints imposed by a law-maker. Though Locke is explicit about this, his flexible use of the word "a liberty" (or "freedom") unfortunately obscures it. To make his talk about "a liberty" (or "freedom") intelligible, we should distinguish three senses of freedom: the state of freedom, positive liberty, and negative liberty. Positive liberty is what each man has as "a power"; negative liberty is a man's freedom from the arbitrary interference of another man; and the state of freedom is the state where every man is positively and negatively free. Locke uses the word "liberty" in the negative sense when he says: "Liberty is to be free from restraint and violence from others" (ST, 57). Each man's negative liberty is secured by a law. The protection of negative liberty is the primary function of a law. This is why Locke claims: "where there is no Law, there is no Freedom" (i.e., no state of freedom) (ST, 57); or the "Natural Liberty of Man" is "to have only the Law of Nature for his Rule" without taking another man's will as a guide for his actions (22). A man's positive liberty is his "power". Locke states that a man's positive liberty in the state of nature is the "Power" "to do whatsoever he thinks fit for the preservation of himself and others within the permission of the Law of Nature" (ST, 128; 129). This positive liberty, qua power, belongs to each man and is distinct from a law whether it is the law of nature, or the law of a commonwealth.

This power, as we shall see later, is non-normative insofar as Locke treats it as a particular species of a man's liberty of actions, and it is normative insofar as he thinks that it is the power to be exercised within the specific constraints of a law. Finally, the state of freedom is the state where everyone is positively and negatively free under the rule of law. Locke's description of the natural state of freedom is the following:

a State of perfect Freedom to order their [i.e., men's] Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man (ST, 4).

Locke's talk about liberty, or freedom, has puzzled some commentators. His famous maxim, "where there is no Law, there is no Freedom", has been sometimes misinterpreted to mean that a man's liberty is obedience to a law. Though Locke is partly to blame (because he does not distinguish the three senses of liberty as I have done above), a full explication of his maxim is the following. The state of freedom is impossible without a law, primarily because each man's negative freedom can only be secured by a law, and secondarily because each man has (and is allowed to exercise) a positive liberty within the specific constraints of a law.

Since the word "a liberty" which appears in Locution LL is "a power", I shall henceforth use the words "a liberty" and "a power" interchangeably in dealing with Locution LL. I have said that Locution LL explains the core of Locke's concept of property, i.e., a man's having a right to dispose of his "objects". This is a plausible suggestion though in his account of appropriation, Locke simply uses Locution P or Locution PI. Take, for instance, the statement that

a man has a property in his person; i.e., he has a right to dispose of his person to the exclusion of the rightful claim of any other man. The core of this statement, his having a right to dispose of his person, can be plausibly rendered as his having a liberty, or power, to dispose of it within the bounds of the laws. Why does the notion of a law come in? The reason is that a "right" is the power which each man has within the bounds of the laws. In stating that every man has "a property in his own person", Locke certainly does not imply that every man has a liberty, or power, to destroy himself. Suicide is prohibited by the law of nature (ST, 6), and voluntary slavery is also prohibited (23). It is plausible to suggest, therefore, "a right" of disposal is a man's power of disposal within the constraints of a law. Take another instance where Locke apparently equates "power" with "a right". He says that "Political Power" is "a Right of making Laws" (ST, 3). Does Locke merely conflate "power" and "a right" here, as some commentators have suggested? A more sophisticated way of treating this apparent conflation is to understand that "a right", according to Locke, is the power of an agent placed under specific normative constraints (constraints of a law, or law-like constraints). If we understand this suppressed premise, then we can see that the power of a supreme political agent is called "a right" when it is placed under some normative constraints (e.g., the political agent's obligation to protect everyone's right of property by a law).

In trying to explain the core of Locke's concept of property by using Locution LL, I shall be defending at the same time the view that "a right" (of disposal), according to Locke, is paradigmatically a man's power or his positive liberty. To state this view more precisely,



a right is an agent's power modified by specific constraints (or obligations) of a law. Since Locke does not systematically explain what it means to have "a right", this view is not immediately apparent. But our ascription of this view to Locke can be justified, and it is important to show that it is justifiable if we are to believe that Locution LL is descriptive of "a right" of disposal. So before I use Locution LL to elucidate the core of Locke's concept of property, I shall offer a justification. My justification is historical.

## 2. 21 A Right as a Species of Power: A Historical View

To those who have first-hand acquaintance with the 17th-century literature on natural rights, it might appear superfluous to justify the view that "a right" is paradigmatically a man's power (or his liberty) of one kind or another. Anyone who reads Suarez, Grotius, Hobbes, Spinoza, or Pufendorf with a philosophical spirit is bound to be struck by their attempts to assimilate "a right" to "a power" of one kind or another. However, a myth prevails among 20th-century intellectuals and scholars that Locke is an exception in the modern tradition of natural rights. It is believed that he "derived" natural rights from the law of nature; or he took the law of nature as the "foundation" of natural rights; or he thought of the law of nature as "embodying" natural rights, or conferring rights on each man in the way that the rule of a game creates rights.<sup>18</sup> This is a myth which rests on the tremendous lack of historical sense. This myth has been perpetuated by university lecturers, authors of popular books on political theory, and even Locke scholars. This myth is just as pernicious as another myth that theorists of natural rights and the law of nature are "rationalists", pure and simple, who derived

everything from self-evident principles. The truth about Locke is this. He gives the name "a right" to the power, or positive liberty, which each man has under the specific constraints of a law. He certainly did not derive this concept of a right from self-evident principles. Rather, Locke took from his predecessors the idea that a right is a species of power.

To destroy the myth and establish the truth, I shall take a historical approach to the concept of a right. A historical approach is useful since Locke's actual use of the word "a right" is very loose, and we gain very little by relying on his inconstant usage. Furthermore, the word he uses most frequently is "property" or "a property", and I cannot rely on his use of the word "property" since I am at the moment trying to analyze his concept of property. The 17th-century word "a right" is an English word which does not have any equivalent expression in the legalistic culture of the Romans. Yet the Latin term "jus" (or "ius") can be taken as a theoretical ancestor of the concept of "a right". A monumental change took place in the meaning – or the primary meaning – of the ambiguous term "jus". The change is most clearly noticeable in the 17th century. This change is so conspicuous in the 17th century that we should regard this century as marking a "watershed" in the history of the concept of "jus". John Finnis has recently provided a brief, yet accurate, account of this watershed. The gist of his account is that whereas for Thomas Aquinas, the primary meaning of "jus" was "the just thing itself" (i.e., the objectively just or fair state of affairs), 17th-century theorists converted "jus" into an individualized, power-like entity. This power-like entity was called, in English, "a right".<sup>19</sup> I shall

endorse Finnis' brief account. But I shall provide a more elaborate historical account to show that Locke belongs to the modern tradition which tried to assimilate "a right" (or "jus") to a man's power (or his liberty). Like his predecessors, Locke individualized and subjectivized what used to be (primarily) the objectively just or fair. Neither the space nor my competence allows me to discuss Suarez or Spinoza below. But I shall deal with Grotius, Hobbes, and Pufendorf who assimilated "a right" to a man's power, and at the same time held the doctrine of the bifurcation of "a law" (lex) and "a right" (jus). The modern movement to assimilate "a right" to the power which a man possesses goes hand in hand with the doctrine that the right (jus) of nature is (at least, conceptually) distinct from the law (lex) of nature. Spinoza seems to be an exception, yet this doctrine is held by Grotius, Hobbes, Pufendorf and Locke in one form or another. Locke's version of the doctrine of the bifurcation of a law and a right is a mitigated version like Pufendorf's, in that it maintains that "a right" after all is a man's power consistent with a law (or modified by a law). This is why it is difficult to grasp Locke's view that a right is a species of power, and this is why it is easy to misinterpret him to be saying that a right derives from a law. My historical account, I hope, will eradicate this academic myth of the 20th century.

I shall begin with a theorist who attempted, for the first time in the history of the West, to subjectivize the just state of affairs by stipulating a particular definition of jus and excluding others. This theorist lived in the 15th century, but it so happens that his definition of jus instantly shows that Locke's Locution LL is an explication of "a right" (of disposal). For this reason, and for the

reason that he seems to be the first theorist to formulate the power-like concept of a right, I shall take him as a starting point. He is a French nominalist, named Jean Gerson. In 1402, he wrote:

Ius is a dispositional facultas or power, appropriate to someone and in accordance with the dictates of right reason.<sup>20</sup>

This definition curiously resembles the way Locke combines "a liberty" (or a power) with "the bounds of the laws" in Locution LL. To see this, we only need to replace "in accordance with the dictates of right reason" by "within the bounds of the laws a man is under". Locke says that a "liberty" (or a power) is something God gave to each man "as properly belonging" to him (ST, 58) just as Gerson says that "a dispositional facultas or power" is appropriate to each man. Although it is unlikely that Locke read the writing of this obscure French jurist, this confirms that Locution LL is Locke's definition or explication of what "a right" is.

Let us now jump to the 17th century, the heyday of the power-like concept of a right, and see what Grotius, Hobbes, and Pufendorf say. In De Jure Belli ac Pacis, Bk I, Ch. 1, Sects. 2-9, Grotius distinguishes three different senses of jus. (Unfortunately, Francis Kelsey's English translation, published in 1925, makes Grotius' discussion of "jus" utterly unintelligible. I shall quote from W. Evats' 17th-century English translation (1682).) Of the three senses of jus, the third sense is equivalent to lex, a law. Grotius defines lex as "a rule to Moral Actions, obliging us to do that which is right" (1, 1, 9). As Pufendorf later points out in De Jure Naturae ([A], 1, 6, 4), Grotius holds that the "law of nature does not create right but merely points out a right already existing" because

lex is defined in terms of "that which is right". What, then is a right? Partly following his predecessor, the Spanish Jesuit F. Suarez, Grotius declares that a right (jus) "properly and strictly taken" is a man's "Faculty" (De Jure Belli, 1, 1, 5). By "Faculty" (facultas), he means the perfect right or the perfect "moral Quality in any person, sufficient to enable him justly to have or to do something" (1, 1, 4). This contrasts with the imperfect right or the imperfect moral quality which Grotius calls "Aptitude". The difference between the two types of right is the following. The faculty enables its possessor to act justly on his own authority without asking permission, and enables him to punish violators of the objects of his faculty, whereas "aptitude" is merely a right to receive some fitting benefits and rewards from others (relying on the authority of others). Grotius further states that there are three types of "faculty" or perfect rights: power (potestas) over oneself or others, dominion (dominium), and the faculty of demanding the payment of a debt (1, 1, 5). It is clear from these that a right in the proper or strict sense (i.e., a perfect right, or faculty) is the moral power each man has over various "objects".

The movement on the Continent has a parallel in England. Hobbes' statement about the opposition between a right and a law, jus and lex, is famous:

[Theorists] use to confound Jus, and Lex,  
Right and Law; yet they ought to be distinguished;  
 because RIGHT, consisteth in liberty to do, or to  
 forbear; Whereas LAW, determineth, and bindeth to  
 one of them; so that Law, and Right, differ as  
 much, as Obligation, and Liberty; which in one and  
 the same matter are inconsistent (Leviathan, XIV,  
 189).

Hobbes' version of the doctrine of the bifurcation of jus and lex is extreme. Unlike Grotius (or Pufendorf, or Locke), he is not satisfied

with distinguishing the meaning of jus from that of lex. Jus and lex are incompatible. Hobbes explicitly states that the right of nature is "the Liberty each man hath, to use his own power, as he will himself, for the preservation of his Nature" (ibid.). Since "liberty", for Hobbes, properly means the absence of external impediments, his concept of a right seems unrelated to a man's power. Yet this is only superficially true. After all, if an external impediment is absent, a man is able to use his power. Hence, a man's ability to use his power (or his power to use his power) comes to be identified as the right of nature. In fact, Hobbes frequently identifies a right with a power. His political philosophy, and his whole philosophy, are about "power". When he says that the power of a man is "his present means, to obtain some further apparent Good" (Leviathan, Ch. 10), and goes on to speak about "natural" and "civil" power, the distinction between "a right" and "power" is minimal (to say the least). As Leo Strauss pointed out, a comparison of Hobbes' Latin texts with English texts shows that he used the word "power" ambiguously - to denote potentia (de facto, or physical power), or potestas (de jure power, or jus), or both.<sup>21</sup>

Pufendorf, who extensively comments on Grotius and Hobbes in his magnum opus, also warns us not to conflate jus and lex (De Jure Naturae, 1, 1, 20; 1, 6, 3). He takes over the idea of "moral qualities" from Grotius, and develops it. A right, power, obligations are all moral qualities. "Power" (potestas) is defined as "that by which a man is able to do something legally and with a moral effect" of imposing obligations on others (ibid. [A], 1, 1, 19). Pufendorf holds that "a right" (one sense of jus) is virtually indistinguishable from "power" (1. 1. 20). He expounds the view that a right is a man's

positive liberty – which is a species of "power" – restrained by a law.

Let us first look at the passage where Pufendorf comments on the ambiguous term "jus":

since a man has the power to do everything that is within his natural abilities, except what is forbidden by law, it has become customary to speak as if one had a right, by virtue of some law, to do whatever is not denied in that law. [But] the word 'right' ['jus'] in this usage, means merely liberty, while the word law [lex] denotes some bond by which our natural liberty is restrained (1, 6, 3).

This passage contains a few important points which need clarifying.

Pufendorf is commenting on one particular use of the word "jus", the word which can mean a right, a law or a body of laws, and several other things. One sense of "jus" can be rendered as "a right", which according to Pufendorf is virtually indistinguishable from "power". So a natural right, for him, is the "power" a man has "to do everything that is within his natural abilities, except what is forbidden by law". Jus, taken in this sense of "a right" or "power", simply means "liberty" rather than "a law", whereas the word "law" denotes a restraint on "liberty". This point is not Hobbesian, as we shall see shortly. Apart from this point, Pufendorf says that we customarily talk "as if" one had a right "by virtue of some law". This is the second point worthy of note.

Let me clarify these two points, for it can greatly facilitate our understanding of Locke's view of a right, liberty and a law. The customary talk Pufendorf has in mind is of the following type: "this or that action is right 'by the law of God'" (1, 6, 3). His point is that this expression misleads us to believe that we have certain rights by virtue of some law. On the true view, a natural right is a natural liberty, or a natural power, provided that a man's natural

liberty is understood as compatible with the law of nature. Pufendorf launches an extensive critique of Hobbes' and Spinoza's concepts of a natural right or a natural liberty (De Jure Naturae, 2, 2, 3-9). The gist of his critique is that man, unlike beasts, gains true benefits by regulating his conduct by a law and reason rather than by acting on an impulse or desire in a law-less manner. The state of nature, therefore, is a state of "peace" rather than a state of "war". Since "a natural state presupposes the use of reason, any obligation which reason points out cannot, and must not, be separated from it" (2, 2, 9). Pufendorf makes his positive claims in the chapter titled "It does not suit Man to Live without Laws" (2, 1). His main claim is that "the term 'the natural liberty of man' ... should under all circumstances be understood as something conditioned by a certain restraint of sound reason and natural law" (2, 1, 8). In the state of nature, he says, men "may use their own judgement and decision, provided, of course, that it is framed on [the] law [of nature]" (2, 2, 3).

Pufendorf's picture of the state of nature anticipates Locke's in that the "natural liberty" of man is restrained by the law of nature which each man can understand, and that it is a state of peace rather than a state of war. Most important of all, Pufendorf achieves rapprochement between a law-less liberty of Hobbesian man and the obligations of a law, by granting man an ability to judge, or decide, or reason.

Pufendorf's successor is Locke, and now I shall discuss him without breaking a historical continuity. I shall take a look at his early Essays on the Law of Nature where he clearly states that "a right" is founded on a liberty, and is conceptually distinct from a law.



In his first essay on the law of nature (lex naturae), Locke states:

This law [haec lex, i.e., lex naturae or the law of nature] ... ought to be distinguished from natural right: for right is grounded in the fact that we have the free use of a thing, whereas law is what enjoins or forbids the doing of a thing (ELN, I, 111).

This passage contains three important points. First, a law (lex) is what imposes obligations (or prohibitions). Secondly, the basis of a right (jus) is that we have the free use of a thing. Locke's Latin sentence runs as follows: "jus enim in eo positum est quod alicujus rei liberum habemus usum". This can be rendered literally: For a right is placed on that, that we have the free use of a thing. In more readable English: For the basis of a right is that we have the free use of a thing. The free use of a thing, or a liberty, should not be taken as the absence of an external impediment or a legal constraint. In the eighth essay, Locke explicitly rejects the view held by Carneades and Hobbes that "each person is at liberty to do what he himself, according to circumstances, judges to be of advantage to him" (ELN, VIII, 207). Locke also says, echoing Pufendorf, that "utility is not the basis of the law or the ground of obligation, but the consequence of obedience to it" (ELN, VIII, 215).

The third point to note about the above passage is that a law (lex) ought to be distinguished from a right (jus). This is a conceptual point worth making, since Locke is writing in Latin and dealing with the ambiguous term "jus". This, again, is not a Hobbesian point. Locke does not hold that a law is incompatible with a right. Like Pufendorf, he maintains that a right is a man's liberty, or power, under the restraints of a law.

The sharp distinction Locke draws between a law and a right does not presuppose that a right is identical with a liberty per se. If it did, then we could not claim that a right, according to Locke, is a man's liberty consistent with the bounds of a law. What he says above is that a law and a right ought to be sharply distinguished because a right is based, or founded, or "posited" (positum), on a man's liberty, and because a law restrains this liberty. The distinction between a law and a right rests on the idea that a liberty is, in some sense, the basis of a right. A man's liberty, which can be said to be the "basis" of a right, is his liberty as it is considered in isolation from a law, or its obligations. It is not clear whether Locke is thinking of a liberty – or the free use of a "thing" – as a power in Essays on the Law of Nature. It is not surprising that he did actually think of a man's liberty as a power, since Grotius and Pufendorf had clearly conceived of libertas as a species of potestas (De Jure Belli, 1, 1, 5; De Jure Naturae, 1, 1, 19). At any rate, a man's liberty or his free use of "a thing" corresponds to his liberty of disposal in the Second Treatise, and insofar as this power is considered apart from any specific obligation of a law, it can be said to be the basis or source of a right. (To avoid misunderstanding, a remark should be made about "the free use of a thing". A thing, res, in this context, is not a physical thing but an abstract thing. The original Latin contains "alicujus" as well, meaning "some". Hence, Locke is asserting that a right rests on our having the free use of some thing, or something. If "some thing", or "something", is taken to include one's action, then Locke can be taken to mean that a right rests on our freely doing something.)

A man's liberty, in Locke's mature and youthful view, should be properly restrained by a law. No man should use his liberty beyond a legal constraint. We can say that his liberty, or his power, is the basis of his right in the sense that his liberty is potentially a right. When a man is placed under the restraints of a law, his liberty or power is called his "right". To define "a right", it is a man's liberty or power placed under the restraints of a law. Whereas the basis of a man's right is the liberty or power he has independently of any obligation of a law, his right is his liberty or power modified by the obligations of a law.

On this interpretation, a man has a liberty or power independently of the law which is binding on him. This liberty or power is the permanent possibility of a man's right. Yet a man's liberty cannot be called his "right" unless it is modified by a normative constraint. A full justification of this interpretation would require a careful examination of what Locke claims when he uses Locution LL ("A has a liberty to dispose of X according to his own will, within the bounds (or permission) of the laws he is under"). But it is sufficient to note for the moment that a man's right, according to Locke, is his liberty "under" the laws binding on him. My historical account has shown that Locke's predecessors attempted to assimilate a man's right to the power of one kind or another which he possesses. It has also shown that a right, according to Locke, is "based" or "posited" on a man's liberty per se. Given his view that a man should not abuse his liberty or use his liberty beyond the constraints of a law, we can claim with sufficient historical justification that "a right", according to Locke, is a man's liberty or power under the constraints of a law.

## 2. 22 An Anatomy of a Man's Right of Disposal: A Critical Analysis

We can now examine the core of Locke's ego-centric concept of property by analyzing his Locution LL. The core - A's "right of disposal" over X - can be represented by his Locution LL. This complex locution contains two unit-ideas. First, A has "a liberty to dispose of X, according to his own will". Let us call this idea the idea of a man's liberty of disposal. Secondly, a superior being - God or the legislative agent of a commonwealth - has set "bounds" to the actions of men. Let us call this idea the idea of the bounds of a law. Locke combines these two unit-ideas in an obscure way. In what follows, I shall attempt to clarify each unit-idea separately ((A) and (B) below). Then I shall discuss the obscure manner in which Locke combines the two unit-ideas, and go on to criticize his concept of a right of disposal (C). His combination of a man's liberty of disposal and the bounds of a law looks complicated, but he makes a simple mistake. He holds that a right is a species of a man's non-normative ability to control his actions.

### (A) A Man's Liberty of Disposal

Let us begin by clarifying the first unit-idea, the idea of a man's liberty of disposal. Three points should be noted about this liberty. First, it is a power; but since "power" is synonymous with "ability" and "faculty", this liberty is a man's ability. Locke states in the Essay that "Faculty, Ability, and Power" are nothing "but different names of the same" thing (II, xxi, 20). Secondly, the focal meaning of disposal is "control" or "arrangement". And thirdly, a man's liberty of disposal over X is a particular species of his non-normative liberty of action. The second and third points need elaborating.

A dictionary typically explains the meaning of "to dispose of X" by reference to a variety of activities which count as the activities of disposing of X: controlling, arranging, managing, transferring, selling, or destroying X. But it is not fruitful to treat these various activities as equally representative of the various aspects of Locke's idea of disposal. Nor is it wise to rely on our modern, loose association of ideas. To "dispose of" an object, according to Locke, is not to "get rid of" it. He certainly did not think of those PAN AM passengers who throw their empty plates and cups into a "waste disposal". Locke's use of the phrase "to dispose of" is old-fashioned. It has a definite focal meaning though it may allow for some flexibility. His focal meaning reflects the Latin root of the verb "to dispose", i.e., dispōnere which means "to place here and there", or "to arrange" (dis-: in different directions + pōnere: to put). The expression "to dispose of", as Locke uses it, is closest in meaning to the following:

To make a disposition, ordering, or arrangement of;  
to do what one will with; to order, control, regulate,  
manage (OED, "dispose of", 8a).

A man's liberty to dispose of his "objects", in Locke's view, is his liberty or power to control or arrange them according to the order which the man issues himself. Locke speaks of a man as having "a Liberty" to "dispose, and order" "as he lists, his Person, Actions, Possessions" (ST, 57; also, 4). His point is that if a man is mature and rational, he has a power to control or arrange his "objects" by himself, without the help (or intervention) of a monarch, a governor, a father, or a relative. When Locke describes "Man" as "Master of himself" (ST, 44) or "Master of his own Life" (ST, 172), or "master of his own liberty" (F. Tract, 124), or a "free disposer of his own actions"

(F. Tract, 156), he does not mean that each man has an arbitrary or absolute power over his life and liberty. What Locke means is that each man has a power to dispose of "his life" and "liberty", i.e., a power to arrange, control, regulate, or manage his body and actions.

The focal meaning of Locke's "disposal" can be best expressed as "control" or "arrangement". But the words like "control" and "arrangement" can also mean many things. In Locke's case, the idea of "disposal" includes "transfer". He does not separate a right (or a liberty) of transfer from a right (or a liberty) of disposal. In Chapter 5 of the Second Treatise, he says that a pre-political owner of external goods transfers a part of his goods to another man freely (ST, 46). He assumes that a liberty of transfer is a part of a complex liberty of disposal. The etymology of the verb "dispose" (dis-pōnere) - to put objects in different directions - is helpful here. A man's act of transferring an object as he thinks fit is an act of arranging it as he thinks fit. Pufendorf clearly states that the power of transfer or alienation stems from "the nature of full dominion" or property in the full sense of the word (De Jure Naturae [A], 4, 9, 1).

A man's liberty of disposal, says Locke, is a man's liberty to dispose of his objects "as he thinks fit" (ST, 4, 128, 129), or "as he lists" (57), or "according to his own will" (58, 59; cf. 22). It is better to say "according to the direction of his mind", where his "mind" is taken to have the power of understanding as well as the power of will. For Locke holds that the man who controls his objects "according to his own will" should be able to direct his will by the power of "understanding". The child who "has not Understanding of his own to direct his Will" does not "have any Will of his own to follow";

in that case, "He that understands for him, must will for him too" (58). An idiot or lunatic is "never let loose to the disposal of his own Will (because he knows no bounds to it, has not Understanding, its proper Guide)" (60). A man's liberty of disposal is conditional on his having the power of understanding or "reason". The "Freedom ... of Man and Liberty of acting according to his own Will, is grounded on his having Reason" (63). The power of "reason" or "understanding" is the precondition for a man's having a liberty of disposal (i.e., control or arrangement), and this power is what God has given to him:

God having given Man an Understanding to direct his Actions, has allowed him a freedom of Will, and liberty of Acting, as properly belong thereunto, within the bounds of that Law he is under (58).

This passage indiscriminately conjoins such distinct notions as freedom of will, freedom of action, and the bounds of a law. By the "liberty of Acting" Locke means a man's liberty of disposal, his ability to control or arrange his objects "according to his own will" or "as he thinks fit".

I have used the expression "according to the direction of his mind", in order to indicate the existing connection between a man's liberty of disposal and his liberty of action in general. In the Essay, Locke defines a man's liberty of action in general: "Liberty" is "a Power in any Agent to do or forbear any particular Action, according to the determination or thought of the mind, whereby either of them is preferr'd to the other" (II, xxi, 8). A man's liberty of disposal in Locution LL is a particular species of this general liberty. A man's liberty of disposal is his power to do or forbear any particular action concerning the disposal (i.e., control and arrangement) of his objects (i.e., his person, actions, and possessions), according to the determin-

ation or thought of the mind. It is a power to do, or forbear from doing, what a man wills with his person, or actions, or possessions (provided he directs his will by his understanding). By contrast, the "liberty" which Locke discusses in the Essay (II, xxi) is a man's power to do, or forbear from doing, anything he wills (provided he directs his Will by his understanding). A man may will any action, whether the action concerns his "objects" or not. His "actions" may be the "Actions of the Mind" (e.g., consideration and assent), or the "Actions of the Body" (e.g., running and speaking), or the "Actions of both together" (e.g., revenge and murder) (II, xxii, 10). Thus a man's "liberty" in the Essay is more general than a man's "liberty" of disposal in the Second Treatise. Yet in both cases, a man's "liberty" is his power or his ability. It is his ability to do, or forbear from doing, a particular action in accordance with the direction of his mind.

Some commentators might suspect that I have forged a connection between a man's "liberty" of action in the Essay and his "liberty" of disposal in the Second Treatise. This suspicion is natural, partly because Locke does not explicitly refer to the Essay when he discusses "liberty" in the Second Treatise, and partly because commentators who try to link the two works are usually guilty of fabricating connections.<sup>22</sup> So I shall try to justify the claim that a man's "liberty" of disposal in the Second Treatise is a species of the general "liberty" of action which Locke discusses in the Essay.

Let us first take a close look at what Locke means by "liberty" in the Essay, II, xxi. His account of liberty is long, tortuous, and not altogether coherent. On one interpretation, even his definition of "liberty" is ambiguous. I have already quoted his definition of "liberty"



which contains the expression "the determination or thought of the mind". One might argue that Locke ambiguously identifies "the determination or thought of the mind". On the one hand, he identifies "the determination or thought of the mind" as "volition", or what a man wills, or the exercise of the power of will (II, xxi, 9; 15; 23; 27; 29). The first edition of the Essay indeed contains the following simple definition of "liberty": "liberty" is "a Power to act, or not to act, in conformity to Volition" (1st ed., II, xxi, 46; quoted from Nidditch's critical ed., note to II, xxi, 78). On the other hand, however, Locke's extended account of "liberty" eventually establishes — or seems to establish — a different identity of "the determination or thought of the mind". From section 47 of the chapter on power onwards, Locke repeatedly claims that a man is a free agent because, and insofar as, he is able to cut off the heteronomous determination of his will (i.e., the determination of his will by his desire) by the power of "judgement" or "understanding". The mind has a "power to suspend the execution and satisfaction of any of its desires, and so all, one after another". So the mind is "at liberty to consider the objects" of its desires, and to "examine them on all sides, and weigh them with others. In this lies the liberty Man has" (II, xxi, 47). Locke continues in this vein, and makes the following famous statement:

we are endowed with a power to suspend any particular desire, and keep it from determining the will, and engaging us in action. This is standing still, where we are not sufficiently assured of the way: Examination is consulting a guide. The determination of the will upon enquiry is following the direction of that Guide: And he that has a power to act, or not to act according as such determination directs, is a free Agent (II, xxi, 50).

It now seems that Locke redefines "liberty". A man's "liberty" no longer seems to be a power to do or forbear any particular action according to his will. In the end, Locke seems to accept a more complex

concept of liberty which incorporates the notion of "judgement" or "understanding". A man's "liberty", he seems to say, is his power to do or forbear any particular action according to what he wills "upon enquiry"; or according to what he wills after "due examination"; or according to what he wills in collaboration with his understanding.

It is not my intention to claim that Locke merely conflated the two distinct senses of liberty in the Essay. There is an ambiguity in the way he uses the word "liberty", and it is important to note this ambiguity to provide a sensitive interpretation of his account of liberty. What I attempt to do now is to state what is unambiguous, and try to remove Locke's ambiguity as much as possible. What is unambiguous is that a man's liberty, according to Locke, is his power to determine or control his action by the powers of his mind. A free agent, in his view, is a self-determining agent. It is the agent who has a power to act, or not to act, "according to the determination or thought of the mind" (or "according as the Mind directs" (II, xxi, 71)). No matter how the mind's powers – the will and the understanding – operate to produce a particular decision or command, a man's liberty is a power to carry out this decision or command. So far there is no ambiguity. To be "under the determination of some[thing] other than himself" is the "want of liberty" (48). To be a free agent is to be able to determine himself by the direction of his mind. Given Locke's careless and flexible use of the word "liberty", we cannot settle once and for all whether he wants to define it by reference to "the will" and "the understanding", or "the will" alone. But on the whole, his view can be stated as follows. We may define "liberty" as "a power to act, or not to act, according as he wills"; but if we so define it, we must add a significant proviso that an intelligent human being ought to

improve this liberty by using the power of "understanding". This improved liberty is what Locke calls "true Liberty" (50), or "the liberty of intellectual Beings" (52), or "the end and use of our Liberty" (48). It is the liberty subject to "the conduct of Reason"; it is the liberty placed under "that restraint of Examination and Judgment, which keeps us from chusing or doing the worse" (50). A liberty without this proper restraint, says Locke, is the liberty "to play the Fool" (50). This is the liberty to follow the will which is completely determined by desires. This is a "liberty" only in the nominal sense, since a man's will is determined by something other than himself. It is an entirely worthless "liberty". A man's "true liberty", or his liberty as an intelligent being, is based on the autonomy of his will secured by the power of "understanding". The role of "understanding" is to make the will independent of any particular desire, at least temporarily. This liberating role of the power of "understanding" is "the source of all [true] liberty", and the liberation of the will achieved by this power is misleadingly called "Free will" (47). According to Locke, the power of "understanding" is absolutely essential to a man's "true liberty" which he frequently describes as "liberty" instead of "true liberty": "without Understanding, Liberty ... would signify nothing" (67); or "no Agent" is "capable of Liberty, but in consequence of Thought and Judgment" (71). Locke uses the word "liberty" rather than "true liberty" in this context, but he is clearly talking about "true" or valuable liberty. Despite his careless use of the word "liberty", we can sum up his view as follows: our crude liberty, i.e., our power to act, or not to act, in conformity to our will, becomes our "true" liberty only if we can "hold our wills undetermined, till we have examin'd the good and evil of what we desire"

(52), hence, only if we can determine what we will by the power of understanding.<sup>23</sup> As it is clear from this, the root idea of our "true" or valuable liberty is a power of self-determination, i.e., a power to control an action by our own decision.

We can now turn to Locke's account of a "liberty" of disposal in the Second Treatise. He describes a man's "liberty" of disposal as a "power" (ST, 128-9), but this alone does not sufficiently justify the claim that the liberty of disposal is a species of the general liberty of the Essay. Locke's Locution LL links a man's liberty of disposal to the bounds which a legislator has set to the actions of men. A man's liberty, qua power, belongs to him, though he may be allowed to exercise this power only within specific normative limits. Later we shall see the intricate connections between each man's power and the bounds of a law (pp. 288ff.). But here we shall confirm that a liberty of disposal is a species of the liberty Locke discusses in the Essay. I have already drawn attention to Locke's statement in the Second Treatise that the "Freedom of ... of Man and Liberty of acting according to his own Will, is grounded on his having Reason" (ST, 63). "Acting" in this context means "disposing of his Property [i.e., his person, actions, and possessions]" (59). "Acting according to his own will" means, in this context, doing what he wills with his person, actions, and possessions. We have seen that a man's "understanding", according to the Second Treatise, is the "proper Guide" which "directs" his will and his actions (ST, 60, 58). To quote another statement from the Second Treatise:

To turn him loose to an unrestrain'd Liberty, before he has Reason to guide him, is not the allowing him the privilege of his Nature, to be free; but to thrust him out amongst Brutes, and abandon him to a state as wretched, and as much beneath that of a Man, as theirs (ST, 63).

The "unrestrain'd Liberty" which Locke speaks of here is a man's liberty to dispose of his "objects" according to his will, without any restraint of "reason" or "understanding". This unrestrained liberty is a species of the unrestrained, general liberty of action mentioned in the Essay, i.e., the liberty to "play the fool". In both the Essay and the Second Treatise, Locke emphasizes that a man should regulate or direct the operation of his will (hence, his actions) by the power of "understanding" or "reason". In both works, he emphasizes that "Government of our Passions" is "the right improvement of Liberty" (Essay, II, xxi, 53). Why does he emphasize the same point that the role of "understanding" is to improve an agent's crude liberty? The answer is that a man's liberty of disposal is a particular species of the general liberty of action discussed in the Essay. A man's liberty of disposal is his power to do, or not to do, any particular action concerning the arrangement or control of his "objects", according to the direction of his mind.

This is a simple point to grasp. But we may fail to notice it, because Locke combines the idea of a man's liberty of disposal with that of "the bounds of the laws he is under" in the Second Treatise. Given this combination, we feel that a man's liberty of disposal has something to do with the laws, whereas his liberty of action has nothing to do with the laws. Yet this is a deceptive appearance. First, a man's liberty of disposal is his power, just as his liberty of action is his power. Qua power, each man's liberty is conceivable independently of the normative bounds which are set to the exercise of power, i.e., the actions of each agent. Secondly, each man makes a better use of his crude "liberty" by consulting an objective norm, a law, whether his crude "liberty" is his general liberty of actions or his

specific liberty of disposal. The second point can easily escape our notice. The point is that each man's power of understanding enables him to consider the bounds which a superior law-maker has set to his actions. In the Second Treatise, Locke says that the power of understanding (or "reason") "instruct[s]" each man "in that Law he is to govern himself by, and make[s] him know how far he is left to the freedom of his own will" (ST, 63). Whereas the power of understanding is the subjective "guide" for his actions, the law binding on him and others equally is the objective "guide" for their actions. Each man, according to Locke, comes to have a "true" liberty of disposal by directing his will by his "understanding", i.e., by the power which enables him to understand the bounds of the laws he is under. In his account of the general liberty of action, on the other hand, Locke hardly mentions the relationship of a law to the improvement of each man's liberty. He is almost exclusively concerned about the liberating role of each man's subjective guide, "understanding". But in discussing "How Men come to chuse ill", Locke does mention the relationship between each man's choice and the law of nature:

The eternal Law and Nature of things must not be alter'd to comply with his ill-order'd choice. If the neglect or abuse of the Liberty he had, to examine what would really and truly make for his Happiness, misleads him, the miscarriages that follow on it, must be imputed to his own election. He had a Power to suspend his [heteronomous] determination: It was given him, that he might examine, and take care of his own Happiness, and look that he were not deceived. (Essay, II, xxi, 56.)

Thus a man's general liberty of action, as well as his specific liberty of disposal, is linked to the law which properly restrains his actions. To be exact, the law does not limit the power of an agent as such. It limits the exercise of his power, or the actions of an agent. It is the device by which each agent can properly improve his crude liberty.

The restraint which the power of understanding places on each man's general liberty of action is the "proper" restraint. It does not diminish his true liberty but "improves" his crude liberty of following his heteronomously determined will (Essay, II, xxi, 48). Likewise, the restraint which a law places on each man's crude liberty is the "proper" restraint. "Law, in its true Notion, is not so much the Limitation as the direction of a free and intelligent Agent to his proper Interest" (ST, 57). In Locke's view, the power of "understanding" mediates each man's crude liberty and an objective law; it is an ability to adjust his crude liberty to the norm. This makes his idea of "true" liberty obscure, since "true" liberty comes to have a tacit reference to the law whereas it was originally conceived as a norm-independent, improved exercise of power, or else a norm-independent, improved power. I shall leave aside the obscurity here. I simply take note of the fact that Locke's account of a man's liberty of disposal in the Second Treatise is continuous, and consistent, with his account of liberty in the Essay. The reason for this is that the former liberty is a particular species of the latter liberty.

I should like to add a historical remark to my account of the connecting link between Locke's two liberties. Locke used his individualistic, non-normative notion of a man's liberty of action in his political theory, just as his predecessors (e.g., Hobbes and Pufendorf) used their individualistic, non-normative notions of the liberty of action in their political theories. A man's liberty of action, as Locke conceived of it, is "individualistic" in the sense that it is his power over his action rather than another man's. It is "non-normative" in the sense that a man has this power as his ability apart from an objective law, though he may exercise it within the

bounds of the law. Hobbes used his general notion of "liberty" (of action) to clarify his notions of natural liberty and the liberty of the subject (Leviathan, Chs. XIV & XXI). Pufendorf maintained that the "natural liberty" of man ought to be properly limited by the law of nature (De Jure Naturae, 2, 1). By this, he meant that a man's "liberty in general" – his "internal faculty to do or avoid whatever any one wishes" after some deliberation – should be used within the bounds of the law of nature (Ibid. [A], 2, 1, 2). Like Locke, Pufendorf held that "liberty" is a "faculty" or power. Then he applied the general notion of liberty of action to the state of nature. I have already hinted that Locke was indebted to him for developing a non-Hobbesian doctrine of the bifurcation of a law and a liberty (Section 2. 21 above). But there is another interesting connection between Locke and Pufendorf. Locke's account of "true" liberty in the Essay is derived from Pufendorf's discussion of "human actions" in De Officio Hominis et Civis. What Locke regards as the actions of "a free agent" in the "true" sense is what Pufendorf calls "human actions", i.e., the actions which proceed from a man's God-given faculties of "understanding" and "will". It is fairly clear that Locke took from Pufendorf the idea that the mind has a power to suspend the execution of a particular desire. He elaborated it in the Essay. This connection, hitherto unknown to Locke scholars, becomes apparent if we compare Locke's account of "true" liberty in the Essay with 17th-century or 18th-century English translations of Pufendorf which make use of the vocabulary of "human understanding". Those early English translations indicate how Locke might have rendered Pufendorf's Latin.<sup>24</sup> For the purpose of our present discussion, we should note that like Locke, Pufendorf treated "human



actions" (i.e., free actions) as arising from the internal faculties of each man in the first instance. He then combined the idea of free actions with another distinct idea of a law, or the norm of human actions, because he had an additional thought that human actions should conform to the norm set by a superior being.<sup>25</sup>

(B) The Bounds of a Law

The second unit-idea of Locke's Locution LL is the following idea: a superior being (i.e., a law-maker) has set "bounds" to the actions of men. To clarify this idea, we need to pull together Locke's remarks about a law, a law-maker, the obligatory force of a law, and the basic precept of a law. His remarks are scattered through his various writings, and they form a more or less coherent whole which deserves the name "Locke's philosophy of law". What I offer below is an exposition of basic elements of his philosophy of law.

Unless Locke specifically talks about definite precepts of a law (or contents of a law), we should understand what he calls "a law" (or "lex") not as a collection of specific rules, but as the decree of a superior being. Locke's talk about "a law" (or "lex") is permeated by the Teutonic idea that a law is what a superior has "laid down" for the actions of men, or it is what a superior has "set" to the actions of men. This is apparent in Locke's definitions of the law of nature and the law of a commonwealth. The law of nature is that part of the law of God which is knowable by the proper use of our natural faculties, and this is the "Law which God has set to the actions of Men" (Essay, II, xxviii, 8). The "Civil Law" is the "Rule set by the Commonwealth to the Actions of those, who belong to it" (II, xxviii, 9). Locke states his general concept of a law in the way that it applies to the law of a commonwealth

as well as the law of nature: a law is "the decree of a superior will"; it "lays down what is and what is not to be done"; and it "creat[es] an obligation" (ELN, I, 111 & 113). Here Locke inherits from Pufendorf the view that a law is "a decree by which a superior obliges a subject to conform his acts to his own prescription" (De Officio Hominis, 1, 2, 2; also, De Jure Naturae, 1, 6, 4).

In Locke's view as well as Pufendorf's, a law presupposes the existence of a superior being. Locke calls this pre-existing superior being "a law-maker". He repeatedly emphasizes that our knowledge of the existence of a law-maker is a necessary condition for our having an obligation to obey his law. Without a notion of "a Law-Maker", "it is impossible to have a Notion of a Law, and an Obligation to observe it" (Essay, I, iv, 8). A "law ... always supposes a law-maker", and without a law-maker we cannot establish substantive morality, i.e., the morality capable of "an obligation" rather than demonstration ("Of Ethics in general", King, Life, II, 133). Without a law-maker, men are "under no obligation". Although philosophers in the past claimed to have derived specific rules of conduct by a rational method, their rules "could never rise to the force of a law, that mankind could with certainty depend on" unless there was a law-maker in the first place (Reasonableness, Works, VII, 140ff.).

The concept of a law-maker is of crucial importance to Locke's philosophy of law, because the obligatory force of a law arises from the pre-existing law-maker. "A law-maker" should not be defined as an agent who makes a law; rather, a law should be defined as the manifestation of the will of a law-maker. How, then, does Locke define the term "a law-maker"? His definition is two-fold. First, "a law-maker" is "some superior power to which he [i.e., any man] is rightly subject" (ELN, IV, 153). Secondly, "a law-maker" is "some superior power to

which we are necessarily subject" (ELN, IV, 155). Thus "a law-maker" is a superior agent to whom men are rightly and necessarily subject. To restate it, "a law-maker" is a superior agent who has a right and causal power over the actions of men. Notice that a "right" and a "causal power" go together. God, who is the Maker of the law of nature, "has a just and inevitable command over us" (ELN, IV, 155; emphasis added). Or "we are ... subject to Him in perfect justice and by utmost necessity" (ELN, VI, 187; emphasis added). Locke in fact tries to prove the supremacy of God by appealing to the idea that His causal power is infinitely greater than that of human beings. Unlike men, God has a power to create the whole universe, and to "bring us into the world, maintain us, and take us away" "at his will" (ELN, IV, 153 & 155; VI, 187). Hence, we are rightly and necessarily subject to Him.<sup>26</sup>

Locke traces the origin of the obligatory force of a law to a pre-existing law-maker, i.e., a pre-existing superior agent who has a right and power over us. He says:

no one can oblige or binds us to do anything, unless he has right and power over us; and indeed, when he commands what he wishes should be done and what should not be done, he only makes use of his right. Hence that bond [i.e., the obligation of a law] derives from the lordship and command which any superior has over us and our actions, and in so far as we are subject to another we are so far under an obligation (ELN, VI, 181 & 183).

Our obligation to do, or not to do, a particular action arises because a superior agent makes use of the "right" (jus), "power" (potestas), "lordship" (dominium), and "command" (imperium) which he already has over our actions. What specific actions we ought to perform, or not to perform, depends on the will of this superior agent. We are obliged, or bound, by his will to do (or not to do) certain things. The "first

thing needed for the knowledge of any law", Locke says, is the knowledge there is a superior being to whom we are subject (ELN, IV, 155; also, 151). The "second" thing we need for the knowledge of any law is the knowledge that this superior being "wills" or "intends" us to do something (ELN, IV, 157; also, 151). The third thing we need to know is what this superior specifically wills, i.e., what particular actions he intends us to perform or not to perform (ELN, IV, 157). Hence, in order to have the knowledge of any law, we need to know that there is a superior agent having a right and power over us, and that he wills us to do (or avoid) particular actions. This epistemological claim has a counterpart in Locke's philosophy of law: "nothing else is required to impose an obligation but the authority and rightful power of the one who commands [i.e., a law-maker] and the disclosure of his will" such that "anyone can understand it who is willing to apply diligent study and to direct his mind to the knowledge of it" (ELN, VI, 187). In other words, a law is binding on our actions because there exists a superior who has a right and power over our actions, and he has promulgated his will clearly. This is the gist of what is sometimes called Locke's "voluntarist" theory of obligation. A more appropriate label would be Locke's "superior will" theory of obligation, since it presupposes a hierarchy of beings.<sup>27</sup>

Locke's "superior will" theory of obligation applies to the law of nature. Mutatis mutandis, it applies to the law of a commonwealth as well. The legislative agent of a commonwealth is "a common Superior on Earth" (ST, 19), and it has a right and power over the actions of the members of the commonwealth. Yet the law of a commonwealth is binding on its members not because it expresses the will of the legislative agent, but because it expresses the will of "the people" (or "the

society", or "the community"). This "will" is the will of the "majority" of the people, because within a united community the "majority" has a right to conclude the rest of the people by its "will and determination" (ST, 95-99). Following Richard Hooker, Locke claims that nobody can acquire the legislative power without "the consent of the Society" (134). Once the legislative power is "established by the Majority" of the society, it has "the declaring ... of that Will" (212). The laws of a commonwealth are "the declaring of the publick Will", or "the Will of the Society" (212, 214).

My exposition of Locke's concepts of a law, a law-maker, and the binding force of a law helps us understand what he meant by "the bounds of a law". The bounds of a law are the obligations which a superior agent (God or the legislative agent of a commonwealth) has imposed on the actions of men. But these "bounds" or "obligations" are, in Locke's view, not sharply distinct from the superior agent's causal power to determine the actions of men. Just as the right of a superior and his causal power are combined in Locke's concept of a law-maker, "a law" and the enforcement of a law are inextricably linked: "where-ever we suppose a Law [we must] suppose also some Reward or Punishment annexed to that Law" (Essay, II, xxvii, 5). The reason why a law and the enforcement of a law are inextricably linked is that it is "utterly in vain, to suppose a Rule set to the free Actions of Man, without annexing to it some Enforcement of Good and Evil, to determine his Will" (ibid.). One of the bounds of the law of nature, which Locke states in the Second Treatise, is this: "Every one ... is bound to preserve himself" (ST, 6). This statement is ambiguous between (a) "Everyone is determined by the will of God to preserve himself", and (b) "In spite of everyone's ability to do what he wills, God does not

permit him to destroy himself". Locke also says that nobody has a "Liberty to destroy himself" (6), but this statement is also ambiguous between (a) "Nobody can destroy himself", and (b) "Nobody is permitted by God to destroy himself". The fundamental precept of the law of nature is the principle of non-harm or non-injury: "No one ought to harm another in his Life, Health, Liberty, or Possessions [which sustain his life]" (6). Everyone ought to abstain from harming, or injuring, another man because God — "one Omnipotent, and infinitely wise Maker" — sent all men "into the World by his order and about his business". They are "made to last during his, not one anothers Pleasure" (6). Here again, it seems that God's will causally determines the operation of each man's will on the one hand, while on the other hand God does not permit any man to harm any other man.

In speaking of the "bounds" of a law, Locke mixes the notion of what we cannot do with the notion of what we may not (i.e., are not permitted to) do. He does not distinguish between the "must" of causal necessity and the "must" of moral (or legal) obligation. Locke is conspicuously insensitive to the distinction between causal necessity and moral (or legal) obligation, when he tries to prove, by using a version of the argument from design, that God has set a law to the actions of men. In the first essay on the law of Nature, Locke states that "it is in obedience to His will [i.e., God's will] that all living beings have their own laws of birth and life", and move regularly (ELN, I, 109). It is "by His order that the heaven revolves in unbroken rotation, the earth stands fast and the stars shine, and it is He who has set bounds even to the wild sea and prescribed to every kind of plants the manner and periods of germination and growth" (ibid., emphasis added). Here Locke takes the validity of the argument from design for

granted. The "bounds" are set by God to all things, the whole of his creation of which human beings are a part. This is a clear-cut case where Locke does not distinguish between causal necessity and moral (or legal) obligation. Locke's discussion of the law of a commonwealth similarly ignores the distinction between men's being determined (or forced) to act and their having an obligation to act. The law of any commonwealth serves to protect each man's life, liberty and possessions (which he has acquired by his labour, commercial exchange, and inheritance) from the violence of other men. Hence, like the law of nature, the law of a commonwealth embodies the basic precept of non-injury. But Locke also holds that the legislative agent in any commonwealth should not coerce individual men except for the purpose of preventing (or redressing) injuries:

Will the magistrate provide by an express law, that [a man] shall not become poor or sick? Laws provide, as much as is possible, that the goods and health of subjects be not injured by the fraud or violence of others .... No man can be forced to be rich or healthful, whether he will or no. (A Letter concerning Toleration, Works, VI, 23.)

Is Locke thinking of the effect of the enforcement of a law vis-à-vis the obligation of a law? No. For he asks whether the subjects of a commonwealth "shall ... all be obliged by law to become merchants, or musicians", while he is discussing the question of "compelling men" to certain actions (ibid., 24, emphasis added). Determination (or compulsion, or coercion) is not treated as distinct from the obligation of a law.

The word "obligation" etymologically relates to the notions of "a tie", "a bond", and "binding force". The Latin root of the verb "oblige" is "obligāre", meaning "to tie to" (ob + ligāre = to + to bind). Hence, it is natural to associate legal (or moral) obligation with causal

necessity. But it is a vulgar mistake if we conflate the two in our philosophical discussion. This vulgar mistake has been committed by many philosophers and legal theorists, and Locke is just one of them. What Locke fails to see is this. A man's obligation is opposed to his "liberty" in one sense, but not to his "liberty" in another sense. His obligation to do X is opposed to his being permitted to do, or not to do, X. On the other hand, his obligation to do X is not opposed to his ability to do, or not to do, X. Take a man's ability to harm, or not to harm, another man, for instance. If a law obliges every man not to harm another man, it presupposes that every man has an ability to harm, or not to harm, another man (according to his decision). Under the law which prohibits mutual harm, each man can harm another man though he is not permitted to do so. A man's obligation to avoid harming another man does not deprive his liberty in the sense of his ability. If a man's obligation to do X implies that he is causally determined to do X, then we cannot praise him for fulfilling his obligation. Nor can we punish him for failing to fulfil his obligation. In fact, there would be no need for reward or punishment if everyone were "bound to" follow the will of a law-maker. This is a paradox for Locke, because he holds that a law is "in vain" without reward and punishment. What he should have done is to distinguish between the two types of liberty, and correspondingly, between causal necessity and legal (or moral) obligation. Locke sometimes speaks of the "permission" (or "allowance") of a law (ST, 57, 59, 128). This suggests that he also thought of a man's obligation in terms of a law-maker's right to grant, or refuse, permission, rather than his causal power. Yet as we have seen, Locke is insufficiently aware of the distinction between causal necessity and legal (or moral) obligation.



Historically speaking, Locke ambiguously repeated Hobbes' unambiguous mistake. Hobbes clearly identified the obligation of a law with the determination of an action (Leviathan, XIV, 189 & 191). Though Locke did not completely identify one with the other, he did not sharply distinguish "obligation" from causal necessity. In this respect, Locke learned little or nothing from Pufendorf's sophisticated account of obligation. Pufendorf distinguished "obligation" from "coercion", or the determination of "the will by an external force" (De Jure Naturae [A], 1, 6, 5). He also rejected the definitions of obligation, offered by Cumberland and the Roman lawyers, which assimilated obligation to causal necessity. Instead, he held that an "obligation ... can in no way so bind the will that it cannot ... go contrary to it" (ibid.). According to Pufendorf, a man can "receive an obligation" because "he has a will which can turn to one side or the other, and so can adapt itself to a moral rule", and because he is "not free from the power of a superior" in a moral, rather than causal, sense (ibid., 1, 6, 6 & 1, 6, 8; also De Officio Hominis, 1, 2, 4). His account of obligation is subtle, and is not altogether free from ambiguity.<sup>28</sup> Nevertheless, it is nearer to the truth than Hobbes' account because he clearly sees that "properly speaking", causal "necessity" is distinct from "obligation" (De Jure Naturae [A], 1, 6, 8).

Perhaps, Hooker's theory of law is another source of Locke's obscure notion of the bounds of a law. Hooker's theory is teleological rather than deontological. It deals with how different kinds of beings "work" or operate for a preconceived end.<sup>29</sup> Nevertheless, Hooker's teleological concept of nature minimizes the difference between prescriptive laws and physical laws. This might have contributed,

indirectly, to Locke's conflation of obligation and causal necessity. (See Locke's use of Hooker in the first essay on the law of nature, ELN, I, 117.) Locke stated that the judicious Hooker had offered the "true notions of laws in general" (Works, X, 308). But we cannot defend Hooker's teleological theory of law. Hume has successfully exposed the arbitrariness of any teleological understanding of nature, in his attack on the argument from design.<sup>30</sup> Mill's attack on Montesquieu's confusion of physical laws and prescriptive laws applies, with equal force, to Hooker's confusion.<sup>31</sup>

Leaving aside the historcal considerations, we may sum up Locke's obscurity as follows. According to Locke, a law not only guides but determines human actions. But he is not aware that a law can be said to "determine" human actions only in the sense that the enforcement of a law has an effect on human actions. If an obligation to do X is effectively imposed on men with reward and punishment, then this effective imposition does produce in human actions a tendency to do X (or a tendency to fulfil the obligation to do X). To say this, however, is merely to point out the truism that the effective imposition of an obligation produces an effect on human actions. It does not follow from this that a man's having an obligation to do X is, or implies, his being determined to do X (or his being determined to fulfill the obligation to do X). Locke has an unanalyzed notion of the "binding force" of a law. But a law-maker's power to cause men to do X must be distinguished from their obligation to do X. Their obligation to do X presupposes their ability to do X, or not to do X, according to their choice.

(C) A Critique of Locke's Ego-Centric Concept of a Right

Locution LL is descriptive of a man's right of disposal, or the core of his exclusive right of disposal. However, it is not clear how each man's "liberty" of disposal is connected with the "bounds" of a law. In what follows, I shall first try to clarify this obscure connection between a liberty and a law. Then I shall go on to criticize Locke's concept of a right of disposal.

We have already seen the ambiguities of the unit-ideas which make up Locution LL. Although each man's "liberty" of disposal is a species of his non-normative liberty of action, Locke leaves the definition of a non-normative liberty somewhat ambiguous. Also, the idea of the "bounds" of a law conflates the idea of legal obligation per se and the idea of the causal efficacy of the imposition of an obligation. Given these ambiguities, it is possible to interpret Locke's Locution LL in more than one way. Let us consider the following sentence: a man has "a liberty (or a power) to dispose of X according to his will, within the bounds (or permission) of the laws he is under". Does this mean that a man has an ability to control X according to his will, while he also has an ability to keep his actions within the bounds of the laws? Or does it mean that he has an ability to control X according to his will, though the force of the laws disables him from doing certain things? Or does it mean that he has an ability to control X according to his will, while he ought to exercise this ability within the bounds of the laws? Or does it mean that he has an ability to control X according to his will, while he is allowed to exercise this ability with the bounds? Locke would not give a negative answer to any of these question. He gives an affirmative answer to every one of them. This is why Locution LL — and Locke's idea of a right of disposal — remains so ambiguous.

Our concern here is to clarify Locke's concept of a right (of disposal). He may be asserting a number of things when he uses Locution LL. But it is unlikely that he would treat a right of disposal as a mixture of a man's ability to dispose of an object and his ability to keep his actions within the bounds of a law. Locke may say that a man's ability to understand a law, and regulate his actions, is a precondition for his true liberty or his right. But he would not say that a right of disposal is an ability combined with another ability. What is a right if it is not an ability combined with another ability? We must clarify what specific relationship holds between a man's liberty (or his ability) and the bounds of the laws, when his liberty is called a "right" (of disposal). But Locke never clarifies this relationship. We are now entering into the most obscure region of his thought.

Let us first concentrate on what is central to his idea of a law and his idea of a liberty and discard what is peripheral to them. What is central to Locke can be stated in terms of the negative function of laws and the sphere of free actions which the laws protect. The basic function of the laws, as we have seen (in Sect. (B) above), is to prevent one man from injuring another. The bounds of the laws protect each man's sphere of free actions (i.e., self-determined actions) from the violence of others. Within this protected sphere, each man has a liberty to control his objects according to his will. If he chooses to do X to his object, he can do X. If he chooses not to do X to his object, he can stop doing X. Where the laws do not impose any prohibition (to prevent mutual injury), each man can do what he wills (without worrying about the possibility of injuring others). This is what Locke means by a "Liberty to follow my own Will in all things, where the Rule prescribes not" (ST, 22; also 57). What is central to Locke's Locution

LL is that each man is able to do, or refrain from doing, what he wills, without injuring other men. The central feature of his concept of a right (of disposal) is that a man's right is his ability to follow his will, under the circumstances where his actions do not injure others.

To avoid misunderstanding, let us note that Locke is not satisfied with the view that each man is "left free" to do (or refrain from doing) what he wills. He would not reject this view, since a law does not impose an obligation on every human action and leaves many actions "free" in the sense of not imposing obligations. Locke expresses the idea of being left free, by his phraseology, "within the allowance (or permission) of the laws". The meaning of "being left free" may correspond to Locke's compound sense of the "bounds" of a law. Namely, "being left free" may be taken to mean being permitted by a law-maker to do (or not to do) certain things, and being not causally determined to do (or not to do) certain things.<sup>32</sup> Nevertheless, freedom of this type is what Locke would call the "liberty" placed "in an indifferency, antecedent to the Thought and Judgment of the Understanding", or liberty "in a state of darkness" (Essay, II, xxi, 71). The liberty of disposal is a positive liberty, or an ability to determine one's actions. It is this liberty that is combined with the laws which prevent mutual injury.

I have replaced the idea of the "bounds" of a law by the idea of the circumstances of non-injury. This replacement enables us to see what is central to Locke's concept of a right. In Chap. 5 of the Second Treatise, Locke uses the concept of property (hence, of an exclusive right of disposal) and tries to show how each man appropriates without injuring others. He tries to link the concept of property with the minimal requirement of all laws — the avoidance of injury.

In Locke's considered view, "injury" means a serious restriction on another man's freedom, or a damage done to another man's freedom.

(See my comment in CHAPTER 1, note 9, pp. 127.) So if a man's right of disposal is his liberty or ability to follow his will under the circumstances where he does not injure others, then we can say that his right of disposal is his ability to follow his will in the way compatible with another man's ability to follow his will.

Let us be a little more exact, however. Though we have captured what is central to Locke's idea of a right of disposal, the contents of the will of a law-maker cannot be exhaustively expressed in terms of the minimal principle of non-injury. God prohibits not only mutual injury but self-destruction and the purposeless destruction of lower creatures (ST, 6). The bounds of the laws, in other words, are not identical with the prohibition of mutual injury. To be exact, we must say that a man's right of disposal is his ability to follow his will in the way that following his will is compatible with the will of a law-maker.

With this preliminary clarification, let us try to settle the ambiguities which arise from the combination of the idea of a liberty and that of a law. A man's right of disposal can be seen as his liberty to follow his will under complex circumstances. It seems that Locke has at least three kinds of circumstances in mind. First, a man loses a certain amount of power or ability, due to the greater causal power of a law-maker. A man's right of disposal, then, is his ability (to follow his will) under the circumstances where a law-maker disables him from doing certain actions. Secondly, a law-maker allows or permits him to use his ability as he thinks fit..

Then a man's right of disposal is his ability to follow his will where a law-maker imposes no obligation, or where he grants permission. Thirdly, a man ought to exercise his ability in accordance with the will of a law-maker, if he has laid down any specific obligation. In this case, his right of disposal is his ability to follow his will without violating the obligations a law-maker has imposed. Locke does not tell us precisely what he means by a "right". But the best way to understand the idea of a man's right of disposal is the following: it is a man's ability to follow his will under the above-mentioned three circumstances.

The dialectic of a man's non-normative liberty and the bounds of a law looks very complicated. But it should not prevent us from detecting the obscurity of Locke's concept of a right. He uses a confused concept of a right of disposal. A man's right of disposal is a species of power or liberty. Furthermore, it is a species of non-normative liberty of action, i.e., a man's dispositional ability to do, or not to do, what his mind commands. It is true that a man's right is not simply an ability to do what he wills. As we have seen, it is an ability to be used in certain manners. Yet this does not alter Locke's view that a man's right is his ability to follow his will. This is a confused concept of a right. He inherited it from his predecessors — those modern theorists who had tried to assimilate a right to a power (Gerson, Grotius, Hobbes, and Pufendorf). The modern tendency to assimilate a right to a man's power is a tendency to stretch the concept of a right inwards, towards a man's body or his mind. By this inward stretch, modern theorists turn a right into an occult quality. If their concept of a right is somewhat intelligible, this is because they stretch the concept of a right twice. After they stretch it inwards, they stretch it outwards again, and try to connect the individualized occult

quality with an intersubjective norm, a law. Let us be specific. We shall consider Locke's idea of a right. As I said, he holds that a man's right is his ability to follow his will, or his ability to act according to the direction of his mind. A right is stretched inwards here. This inward stretch makes a right unintelligible. I shall consider this problem. Though Locke also tries to make a right intelligible by stretching the introverted concept of a right outwards, I shall ignore this second desperate step for the moment. Let us consider the situation where a man's right is his ability to do, or not to do, what he wills (or what his mind directs).

Trivial examples can refute this introverted notion of a right. What is a man's "right" to dispose of his "arm", according to this introverted view? It is his ability to perform, or refrain from performing, any particular action concerning the disposal of his arm, according to the direction of his mind. This statement is long, but I hope it is intelligible. If he wants to move his arm, he can; if he wants to stop the movement of his arm, he can; if he wants to give it away, he can; and so forth. But what would happen if he ceased to be able to move his arm? Someone else could seize him by the arm, or his arm might be paralyzed. Would he cease to have a right to do what he wills with his arm, as soon as I held his arm? No. Something is wrong with the introverted view which equates a right with a liberty of action. I shall offer one more example. Suppose that a man drinks Scotch in his house and gets totally drunk. He loses his will-power, his "understanding", and his ability to organize his actions according to "the direction of his mind". Would he lose a right to dispose of his house and his possessions? He is no longer "a free agent" in Locke's sense (i.e., a self-determining agent). If his right is a species of



his general, non-normative liberty of action, then his right should disappear as soon as his mind loses control over his actions (or the objects of his actions). So if the introverted view is correct, we can go into his house while he is drunk or asleep and we can take all his possessions without violating his right. We cannot violate the right which has disappeared. These trivial examples show that there is something terribly wrong with the view that a right is a man's ability to follow his will, or his ability to control his actions according to the direction of his mind. A right does not come into existence because a man's mind gains control over his actions. Nor does a right go out of existence because his mind loses control over his actions. The existence or non-existence of a right is independent of the mind's command over his actions. Some 20th-century libertarians openly assert that a man's right of ownership is his ability to control his body and actions by the mind. They equate the right of ownership with a man's non-normative liberty of action, i.e., his power to do, or refrain from doing, what he wills.<sup>33</sup> They openly make the mistake which Locke tacitly makes. A man's right is not his ability to control his actions by his mind. A liberty of action is the power which anyone can have, whether he has a right or not. It has nothing to do with the idea of a right. To use a conventional expression, all rights are social — social in the broad sense that all rights presuppose an interpersonal rule which regulates the actions of men. A man's right, by definition, is something that another man ought not to invade. If this is the case, a man's right embodies or presupposes the rule that another man ought not to invade it. No matter how diligently we analyze the relationship between a man's mind and his actions, we do not get

anything like the idea of a right of disposal. To get the idea of a right, we must look at the relationship between one man's actions and another's. We must look at a system of rights, or a rule-governed institution where one man respects another's person or goods. It is by virtue of this institution that a man's right of disposal continues to exist even when his "mind" loses control over his actions.

I am now criticizing the view that a man's right (of disposal) is his liberty of action, where "a liberty of action" is taken to mean a man's power or ability to do, or forbear from doing, any particular action according to the direction of his mind. This liberty has no conceptual link with a law, though Locke himself accidentally links it with a law. This liberty is simply the mind's power to control or organize actions. Consider the following situation: A professional thief breaks into a rich man's house. He is such an experienced thief that every action is in his command. He knows when to move forward, when to turn around, etc., and he does everything according to his decision. His mind is always alert, and his action follows the direction of his mind. If he chooses to steal cash, he can; if he chooses to stop stealing cash, he can (because he can easily steal gold instead); etc. This thief's mind, like the mind of any other man, is the decision-making agent, according to the libertarian way of looking at actions. As long as this thief is well trained, and has a power to control his actions, he has a liberty of action. But he does not have a right to do what he does; nor does he have a right to the goods he has acquired. He is a law-breaker, and has a perfect liberty of action.

I do not want to multiply fictitious examples, but it is libertarians who come up with a fictitious example such as "Robinson

Crusoe". They say: Crusoe has a right of disposal (or ownership) over his body, his actions, and his land, in the sense that he can control them according to the direction of his mind. It is natural for them to say this. For there is no interpersonal rule on Crusoe's island (according to their secular version of Robinson Crusoe); Crusoe encounters nobody; he is supposed to encounter his body, his actions, and his land; and libertarians themselves want to defend a right of disposal by their favourite example of Robinson Crusoe. However, if they affirm that Crusoe's right of disposal is his power to control his body, his actions, and his land according to the direction of his mind, then they are condemned to abolish his right on the grounds of the weak power of his mind. Whenever Crusoe stumbles on a rock, he loses his power to control the movement of his body and thereby loses his right to dispose of his body. Whenever he falls ill and his mind can not control his own actions — there is no Friday to look after him, incidentally — he is condemned to lose his right of disposal over his cottage and his land. In short, the quasi-Cartesian maxim "cogito ergo meum (id est)" is palpably false. We cannot advance a single step in our philosophical discourse on rights unless we abandon this foolish maxim.

My criticism is directed against the equation of a right with a non-normative liberty. It is a valid criticism of Locke's idea of a right, though his idea is more complex. Locke's labourer has a right to dispose of his body, his actions, and his land in the sense that he can control them according to the direction of his mind, in the way consistent with the will of God (i.e., the law of nature). God prohibits mutual injury and violence among men, a man's destruction of himself, and his purposeless destruction of lower creatures. Given these norms, Locke's "right" of

disposal might appear to be a clear-cut normative concept. But this is not the case. Locke's concept of a right of disposal is a normative concept in a very limited, special sense, and in many cases it is indistinguishable from a man's dispositional ability (i.e., liberty) to follow his will. Two points need to be confirmed. First, Locke's concept of a right of disposal is normative in the sense that this "right" is a man's dispositional ability (to control his actions) under the norms laid by a superior law-maker. He holds that the exercise of this ability should be properly restrained by the laws, and in this sense a man's ability is normative. The ability itself is a natural ability rather than any special, non-natural ability. Secondly, where a law leaves actions free or where a law is silent, a man's right of disposal is indistinguishable from his liberty of disposal. If a right of disposal is a man's liberty of disposal within the bounds of a law, and if there is no bound set to a particular type of actions, then a man's liberty to act (or not to act) in accordance with his decision becomes indistinguishable from his "right". Thus we can affirm that under the circumstances where a law does not impose any obligation or prohibition, a man's right of disposal is identical with his ability to organize his actions (with respect to his objects of disposal). So we can see that Locke has the concept of a right which I have attacked, i.e., a right as an introverted, non-normative liberty. There is no point in calling the mind's power over actions "a right". Locke emphasizes that man can cut off the heteronomous determination of his will by the power of understanding (pp. 270ff.). But the mind often fails to control actions (bodily or mental actions), and even if it does effectively control certain actions, this has

nothing to do with a right. For a right, as I said, implies that it ought not to be violated by other men. But there is nothing in the nature of a man's non-normative liberty of action which imposes this obligation upon the actions of other men. An intersubjective norm is required for the imposition of an obligation. But even if we consider the combination of a non-normative liberty with a law as Locke does, it is wrong to give the name "a right" to this liberty as long as we consider this liberty from the viewpoint of an agent. It is correct to say that an agent's liberty is his right because, and insofar as, a law prescribes to others that they ought not to violate his liberty. But it is a mistake to say that the liberty an agent possesses, and exercises within the bounds of a law, is his right. This liberty remains an agent's natural ability, and does not miraculously turn into a normative entity once its exercise is curbed. A Karate expert has an ability to kill another man (according to the direction of his mind), and Locke might say that he ought to use this ability within the bounds of a law. But in this case, his ability to kill another man under the legal restraints is not his right. On the contrary, if his ability is restrained by a law, then it preserves another man's right (to life). This example shows how futile it is to stretch outwards the concept of a right which has already been stretched inwards. Pufendorf and Locke, as we saw in Sect. 2. 21, try to make each man's liberty compatible with a law. This is an attempt to avoid Hobbes' position that each man's natural liberty (or natural right) is his arbitrary power, i.e., his power to do whatever he wills. Their strategy is to connect each man to a law by saying that he has a power of "reason" or "understanding", i.e., a power to know the law and a power to regulate actions. This outward stretch shows us that there is a difference between arbitrary power and

"true" liberty. But this does not give us any intelligible concept of a right.

From his predecessors, Locke uncritically took over the idea that a right is a species of the power which an agent possesses. This idea, however, is not based any serious philosophical consideration. It is rather an invention of the modern age. Just as Descartes invented the mind, modern theorists of natural rights invented the subjective right, or the ego-centric right which is hardly distinguishable from an agent's dispositional ability. I have reviewed earlier (pp. 257-62 above) their statements about jus and lex, and what jus is. They are more or less declarations, rather than explanations. Their declarations reflect the growing individualism of the modern age. If we ascribe a certain faculty or power to each man, and call it a right, then we can treat him as a possessor of an inviolable entity. Hence, there is a good pragmatic reason for promoting the idea of the ego-centric right, if we want to defend the dignity of each individual man. However, as we have seen, the idea in question is quite obscure. At least, Locke's version of the ego-centric right of disposal is quite obscure. Since he is the least formal and least systematic of all major theorists of natural rights, we may expect that other theorists had given a solid philosophical account of this peculiar idea. Yet there seems to be no such account. This idea was invented without any serious thought behind it, for the pragmatic purpose of defending an independent individual. To illustrate this, I should like to mention the fact that Grotius introduced his concept of "faculty" (a right in the strict sense) without explaining the connection between this concept and his Stoic ideal of social harmony. In the Prolegomena to De Jure Belli ac Pacis, he states that man's sociability, or his propensity to conserve a social union, is the origin of a right in the strict sense: "this very conservation

of Society ... is the foundation [fons: fountain, spring, source] of that which is properly called Right" (Prolegomena, 8). But he nowhere explains how the individualistic, possessory right arises from man's sociability. This is a clear indication of the fact that Grotius is interested in using the then novel idea of a subjective right, rather than explaining the status of this right in detail.

My criticism against Locke in this section is implicitly a criticism against the whole tradition of natural rights which tried to separate an agent's power from an intersubjective norm, and assimilated a right to the agent's power. A non-normative right, however, is a contradiction in terms. The modern tradition of natural, subjective, and ego-centric rights may serve a practical purpose because it asserts that each man has rights. Yet we must remember that mere assertions do not amount to any philosophy. If we follow this tradition blindly, we will end up shouting loudly (like Robert Nozick) that we have rights. But those who shout can never explain where those rights come from, and it is the height of folly to look inside to discover the source of rights à la Descartes.

I do not need to develop an alternative concept of a right here. I have already suggested that a right presupposes an interpersonal rule, and that a man's right over X owes its existence to the rule which prohibits other men to take X. This suggestion is not new, but at least as old as Hume. It is Hume who criticized the notion of a subjective, ego-centric right, in his discussion of justice and property. He presented the view that the concept of a right (or property) is just as intersubjective as the concept of justice: "Those ... who make use of the word property, or right, ... before they have explain'd the

origin of justice ... are guilty of a very gross fallacy" (THN, 491). Property "vanishes" like one of "the imaginary qualities of the peripatetic philosophy" if it is considered "a-part from our moral sentiments"; and property consists in the "influence" which the "external relations" of a physical object to its possessor has "on the mind and actions" of other men (THN, 527). Hume's approach to the concept of a right has inspired my criticism of Locke. It is worth noting that his interpersonal or institutional perspective arose at the time when the Cartesian ego fell into pieces. In the Appendix to A Treatise of Human Nature, Hume confessed that he could not discover "the principle of connexion" — the principle which combines successive states of consciousness to form the idea of "self" (633ff.). We have seen Locke's peculiar, inward stretch of the concept of a right. I have rejected this Cartesian view of a right without confessing any metaphysical bewilderment.

\* \* \* \* \*

In Sections (A), (B) and (C) above, I have performed an anatomy of Locke's concept of a right of disposal. To review it briefly, it consists of two unit-ideas "a man's liberty of disposal" and "the bounds of a law". Both ideas are ambiguous. Their combination is supposed to make up "a right of disposal", yet this combination does not amount to any intellible concept of a right.

Next we shall explore the outer layer of Locke's concept of property. Our question is what it means to say that "a right of disposal" is exclusive.



## 2. 3 The Fringe of Locke's Ego-Centric Concept; or the Exclusiveness of a Man's Right of Disposal

As I indicated earlier, Locke's concept of property is "an exclusive right of disposal" over X in the sense of a right to dispose of X to the exclusion of the right of any other man to X. I also indicated that the exclusive right in this sense is different from the exclusive right in the sense of the right to exclude others (Sect. 2. 1, p. 243, above). In what follows, I shall discuss the exclusiveness which is characteristic of Locke's concept of property. Let me begin by stressing that Locke's "exclusive right" is not a right to exclude others, but a right of exclusive disposal.

For the sake of illustration, let us consider the sentence, "He owns his land" (or "His land is his property"). (Note that "His land is his property" is not tautological. I take up this sentence here, because the sentence of this form is a paradigm of Locke's talk about property. "His" land can be understood as the land he uses, the land he cultivates, the land he possesses, etc. In short, a definite relationship other than the relationship of property holds between a particular portion of land and himself.) According to Locke's concept of property, "He owns his land" can be translated as follows:

- (a) He has a right to dispose of his land, without anyone else having a right to it.

If we take property to be a right to exclude others, then we will translate the same sentence as follows:

- (b) He has a right to exclude any other man from using, or taking, his land.

The difference between (a) and (b) can be brought into relief, if we ask a simple question "What right does he have?" Locke says that he

has a right to dispose of his land, adding that nobody else has a right to his land. Those who assert (b), by contrast, say that he has a right to exclude others, adding that by virtue of this right he can effectively use, possess, or control a particular piece of land. The difference between a right of disposal and a right of exclusion is so striking that even the laziest mind can understand it. It makes us wonder why so many intelligent commentators on Locke have failed to understand it.

The contrast between Locke's concept of property and "a right to exclude others" is useful. A right to exclude others presupposes the real existence of other men, and it is the right directed against others. This idea is closely connected with the view that man is a social being, a being among other beings. One man's property is a right to exclude others who already exist in "society" in the broadest sense of a mode of living together. But Locke's concept is completely different from this concept, the other-directed concept of property (which may or may not presuppose an ego as the indispensable core). In his view, each man's mind is linked to his objects (his person, or his goods, or a portion of the world he is about to appropriate), and also to the bounds of a law. Then those objects "exclude" other men in the sense that they do not have any right to those objects. The holder of the right of disposal does not exclude other men. Other men simply do not have a rightful claim to the objects of a particular man's right of disposal.

In order to avoid misunderstanding, we should perhaps designate Locke's concept of property as "a right of exclusive disposal" rather than "an exclusive right of disposal". For it is a right to dispose of an object exclusively, i.e., to the exclusion of any other man. But we shall stick to the expression "an exclusive right of disposal". The point is that it means the absence of a right on the part of others.

What I have said above can be confirmed by Locke's text.

There is no textual evidence to support the view that property, according to Locke, is a right to exclude others. What he says is that property (in the state of nature) is "a private Dominion, exclusive of the rest of Mankind" (ST, 26); and that property (in political society) is someone's object "by peculiar right exclusive of others" (Works, IX, 101). These statements simply confirm that property is a right to dispose of an object to the exclusion of the right of others. Locke frequently speaks of a man's liberty to "dispose of" various objects, but he does not even hint that a man has a liberty to exclude others. In fact, the general idea of a right against others is alien to Locke's political theory. The only right that might appear to fall under this general idea is the natural right (or power) to punish criminals. He says that it is one man's "Power over another" man (ST, 8). But this power is "the Executive Power of the Law of Nature" (13). The power of punishment is not properly a power against others, but the power to enforce the just order among men. It is only a power against those who violate the rights of others and the law of nature.

Having made these preliminary remarks, I shall now clarify the idea of an exclusive right. There are three points I should like to make. First, the exclusive right of a particular man is opposed to the common right of everyone. Secondly, the holder of an exclusive right can willingly suspend the exclusion of other men so that they may acquire a right. Thirdly, each man can have an exclusive right even if no other man exists in the world.

## 2. 31 The Exclusive Right of a Particular Man versus the Common Right of Every Man

In offering an exposition of Locke's account of appropriation, I have discussed the common right of everyone and its logical relationship to the exclusive right of a particular man (pp. 24-6). I shall try not to repeat what I said. The distinction between the exclusive right and the common right was frequently used in 17th-century writings. Basically, the distinction captures the idea that certain things belong "exclusively" (or "properly") to one man, whereas other things are "common" to all men. Though theorists had divergent views about the precise sense of "property" and "community", they agreed that a distinction can be usefully drawn between proper things and common things. "Things" here are immaterial as well as material objects. This can be shown by a brief historical survey.

I shall glance at the 17th-century contrast between the exclusive right of a particular man and the common right of every man. Hobbes states: "Before the yoke of Civill Society was undertaken, no man had any proper Right; all things were common to all men" (De Cive, XII, 7). He also speaks of "things held in propriety". Of those things, the "dearest" are a man's "own life, & limbs; and in the next degree ... those that concern conjugall affection; and after them riches and means of living" (Leviathan, XXX, 382f.). Grotius also contrasts things proper with things common: "Some things are ours by a Right common with all Mankind, and some things are ours, in our own particular Right" (De Jure Belli, 2, 2, 1). Unlike Hobbes, Grotius holds that certain things are "by nature" proper to a man, or "a man's own". He enumerates those things: "his Life, ... his Limbs, his Reputation, his honour, and his peculiar actions" (ibid., 2, 17, 2, 1; also, 1, 2, 1, 5).

Pufendorf adds a further distinction to the distinction between "proper" and "common", by speaking of "positive" community and "negative" community (De Jure Naturae, 4, 4, 2). This, however, does not concern us. Pufendorf follows Grotius in listing certain objects as our "own" — exclusively or properly ours — by nature: "our Life, our Bodies, our Members, our Chastity, our Reputation and our Liberty" (ibid [B], 3, 1, 1). Finally, Leibniz contrasts a man's "exclusive right to a thing" with things held "in common", when he comments on Locke's definition of "property".<sup>34</sup>

Given this historical background, it is not surprising that Locke contrasts "property" with the "common" right of everyone. In his account of appropriation, he typically indicates the contrast by two locutions, "a property in" and "a right to". It is as if Locke had translated the difference between "a real right" and "a personal right", or jus in re and jus ad rem. Let us clarify the relationship between the two rights. As I said in CHAPTER 1 (pp. 25f.), the common right of everyone is a right to take, and make use of, an indefinite part of the external world of goods. Hence, it is not accurate to say that an exclusive right is incompatible with a common right. A particular man can have "a property in" X, while at the same time every other human being retains his "common right" with respect to the whole class of external goods minus the X portion. To clarify the relationship between the two rights, we must take into account the object of a right rather than a right in the abstract. The relationship is simple: if a particular man has "a property in" X (i.e., an exclusive right over X), then no other man has "a right to" X (or no other man has a right of free access to X; or X is not the object of the common right of everyone else). This is a logical rather than a causal relationship. Locke himself presents this logical relationship in his account

of appropriation, as if it were a causal relationship. This is because in Chapter 5 of the Second Treatise, he discusses how particular men come to have "a property in" the external world and how the "common right" of everyone goes out of existence. Locke says: if a man has acquired "a property in" a natural object by his labour, then he has annexed something to it with the consequence that this "something" excludes the common right of other Men" (ST, 27). "The Fruit, or Venison, which nourishes the wild Indian" must be regarded as, or must become, the object of his exclusive right so that "another can no longer have any right to it" (26). If we isolate the logical relationship from these and other statements of Locke's, we can express it as follows: A's having "a property in" X is incompatible with any other man's having "a right to" X.

Now we have clarified the opposition between the exclusive right of a particular man and the common right of everyone. It is clear from what I have said above that the exclusiveness of the exclusive right consists in the absence of a right on the part of others, rather than in the supposed right to exclude others. The point of Locke's use of the idea of an exclusive right is to emphasize that whoever holds an exclusive right over X is the sole legitimate controller of X, i.e., the legitimate controller of X without anyone else having a right to X..

Before I end this discussion about the contrast between the exclusive right of a particular man and the common right of everyone, I should like to make one remark to avoid misunderstanding. Though I have explained the status of the exclusive right by reference to the common right, it is a mistake to think that a man's exclusive

right is simply opposed to the common right of everyone else, and is compatible with other rights. If A has an exclusive right over X, then others do not have any rightful claim to X (unless A himself has conferred a certain right to another man by a contract, for instance). I have focused on the contrast between the exclusive right and the common right because it is the 17th-century distinction, and it plays an important role in Locke's account of appropriation. Nevertheless, a man's exclusive right over X excludes any right or claim that another may make with respect to X. The common right primarily (if not solely) means everyone's primitive right to make use of a part of the external world. Even if this right is completely extinguished in a certain part of the civilized world, each man's exclusive right will remain exclusive without excluding the common right. Also, a man's exclusive right over "his person", strictly speaking, is not opposed to the common right of everyone. The reason is that the common right is the right to an indefinite portion of the external world. So when Locke says, "every Man has a Property in his own Person. This no Body has any Right to but himself," he is not speaking about "the common right" in the strict sense of the phrase.

## 2. 32 The Willing Suspension of Exclusion

One man's exclusion of other men may be considered either from the viewpoint of the society where they live together, or from the viewpoint of the agent who has a right of disposal over his objects. Locke takes the latter viewpoint, and he maintains that the holder of an exclusive right can suspend the exclusion of other men by the power of his mind.

Let us consider the suspension of exclusion. To say that a man has an exclusive right over X does not imply that other men

can never acquire a right to X. Other men can acquire a right to X with the consent of the holder of the exclusive right. But the crucial point is that other men can acquire a right to X only with the prior consent of the holder of the exclusive right. Locke says: "I have truly no Property in that, which another can by right take from me, when he pleases against my consent" (ST, 138). This statement logically follows from his concept of property. A man's property in X is his right to dispose of X to the exclusion of the rightful claim of any other man, where "his right to dispose of X" means his liberty to dispose of X according to his will within the bounds of a law. Hence, if A has an exclusive right over X, another man can acquire a right to X only with A's prior consent or voluntary agreement. The agent, or the mind, decides whether another man should have a right to the objects which lie within the sphere of its control. Thus the holder of an exclusive right can suspend exclusion willingly, i.e., by exercising one of the powers of the mind — the will.

## 2. 33 The Unnecessary Existence of Other Men

An interesting feature of Locke's concept of an exclusive right (of disposal) is that those who are excluded do not have to exist in reality. If property is a right to exclude others, then this concept of property requires that other men exist. The concept becomes idle if others do not exist. But Locke's concept is different. He holds: a man's "exclusive right of disposal" **over** X is his right to dispose of X, while ~~another~~ another man who may exist does not have any right to X. Even if there is nobody other than the man who has a right of disposal, this concept remains coherent. Locke wants to say that he alone has a right of disposal, whether there exists any other human being in the world or not.



Locke's idea of exclusiveness — hence, his concept of property — remains coherent even if only one man exists in the world. The existence of other men is not necessary for the coherence of his concept of an exclusive right (of disposal). Let us see that this is, in fact, Locke's view.

It is worth noting that according to Locke's account of appropriation, each man comes to have "a property in" a definite portion of the common world simply by mixing his labour with it. The whole process by which a man comes to have a property in a portion of the world takes place, and completes itself, without the presence of other men. Let us be clear about this point. Locke says:

He that gathered a Hundred Bushels of Acorns or Apples, had thereby a Property in them; they were his Goods as soon as gathered (ST, 46).

And 'tis plain, if the first gathering made them not his, nothing else could (28).

As we can see, a man establishes "a property in" acorns or apples as soon as he picks them up, and without encountering any other human being. We have seen in PART 1 of this chapter that Locke makes use of the notion that "nourishment is his". Locke's notion of appropriation is linked to the intimate bodily function of a man, while his concept of property is connected with a man's mind. The presence of other men is not required for appropriation, and given that appropriation presupposes the concept of property, the presence (or real existence) of other men is not required for the concept of property.

A man's appropriation, his coming to have a property in a portion of the external world, began in the beginning of the world "when Men were ... in danger to be lost, by wandering from their Company, in the then vast Wilderness of the Earth" (ST, 36). Locke's appropriator

is a Robinson Crusoe who "carved" a "Portion" "to himself" (51), though this Crusoe is placed on the vast American Continent rather than a small island off the coast of America. Locke's Crusoe does not meet another human being until after he has acquired "a property in" a portion of the world. Though this is a familiar plot in all Robinsonades' romances, it reveals an important feature of Locke's concept of property. To push Locke's assumption to its logical conclusion: even if all inhabitants of the first ages of the world other than one individual appropriator (named "Crusoe") are shipwrecked, it makes sense to describe him as having "a property in" his person and coming to have "a property in" a portion of the external world. In Locke's view, each man can have an exclusive right of disposal even if no other man exists in the world. One striking feature of his account of appropriation is the unreality of the existence of other men. Locke describes appropriation from the viewpoint of an agent (i.e., an appropriator), and forms the agent-centred concept of property which does not necessarily refer to another existing human being. Certainly, men meet each other as legitimate disposers of goods in the commercially developed state of nature. But prior to this stage of the world, each man is separate from others. Each man seems to think that other men may exist somewhere in the world, or that they may come into being in the future. Other men, in short, are potentially existing men. Or perhaps, they are the human beings each independent man imagines to exist. Robinson Crusoe imagines other men to exist somewhere in the world. Whether the existence of other men is probable or imagined, it is clear that the real existence (or non-existence) of other men does not matter to Locke's concept of an exclusive right of disposal. If other men happen to exist, then they do not have a right to what Crusoe has already acquired by his labour.

Thus Locke's concept of property is ego-centric in a full-blooded sense. As we have seen, each man's mind is the indispensable core of his concept of property. But this ego-centricity is only one phase of his ego-centric concept. The other phase is that other men are not indispensable but dispensable. The existence of other men is an accidental feature of the world, and Locke's concept of property remains coherent and intelligible whether other men exist or not. This full-blooded ego-centricity, one might say, is a universal feature of the modern concept of private property. Yet the truth is that other modern theorists, whether they take a man's mind as an indispensable core of a right or not, tend to treat the existence of other men more seriously than Locke. Pufendorf is a good example. He maintained that since property implies "an exclusion of others" (i.e., other men who really exist in the world rather than those who probably, or are imagined to, exist), the concept of property is not "intelligible before more than one man has come into being". It follows that Adam, the first man on the earth, could not possibly have property: "the right of Adam to things was different from that of dominion which is now established among men" (De Jure Naturae [A], 4, 4, 3). Hobbes and Grotius also held the un-Lockean view that one man's property presupposes the real existence or presence of others. These modern theorists had an ego-centric concept of a right, and assimilated a right to an agent's power. But they did not develop a full-blooded, ego-centric concept like Locke's. (In Appendix 3, Sect. (ii), I have tried to show that Locke is unique among modern theorists in providing a strongly ego-centric concept.) Furthermore, if we look at 18th-century theorists, we discover that the great Scottish trio - Hutcheson, Hume, and Smith -

discussed one man's property and rights in relation to other men. Locke's strongly ego-centric concept of property is by no means the universal, modern concept of property, though today's libertarians may elevate his concept to the status of the concept of property.

Given Locke's concept of property, it is intelligible to say that the first inhabitant on the earth has "a property in" this or that object. As we have seen, the exclusion of other men means that other men, who may or may not exist, do not have a right to the object of a man's right of disposal. This is a highly attenuated notion of exclusion. If other men did not exist, then it would be pointless to say that a particular man has "an exclusive right of disposal". In that case, his "exclusive right of disposal" would be identical with his "right of disposal". In fact, the exclusiveness of property can be treated as a "fringe" of Locke's concept of property, precisely because other men are not present in the neighbourhood of each individual appropriator (according to his account of appropriation).

From what I said above, it should be clear that Locke's concept of property is often indistinguishable from the everyday notion of possessions. The ordinary notion of possessions can be represented as a two-term relationship between the possessor and external objects. Locke's concept of property, strictly speaking, cannot be represented as a two-term relationship. For it must refer to "other men", as well as the owner and the owned. However, since those other men may or may not exist in Locke's view, his concept of property collapses into the ordinary notion of possessions very easily. The circumstance of superabundance portrayed in Chap. 5 of the Second Treatise virtually abolishes the distinction between the triadic relationship of property

and the two-term relationship of possession. In the sparsely populated area with superabundant resources, one's neighbours can be treated as non-existent for practical purposes. Hence, a man's property becomes indistinguishable from his possessions. In fact, Locke does not distinguish between property and possessions in his account of appropriation.

#### 2. 4 Concluding Remarks

We have come in full circle. We started with the observation that though Locke seems to treat property as a simple two-term relationship, there is a definite arrangement of entities hidden under the simple representation. Then we analyzed this arrangement —the egocentricity of Locke's concept of property — by taking a close look at its core (i.e., a man's right of disposal) and its fringe (i.e., the exclusiveness of a man's right of disposal). Now we have ended our discussion by affirming that his concept of property tends to collapse into our ordinary notion of possessions.

In concluding this analysis, I should like to consider briefly whether we should retain Locke's concept of property or not. First of all, we should not assume that there is an eternal, Platonic entity called the concept of property. There are various historically evolved concepts. Some of them are confused while others are not confused. But even the most confused concept generally turns out to be useful for a limited purpose. Without making a futile attempt to look for the eternal concept of property, we should ask what use and abuse can be made of Locke's concept of property. My central criticism was directed against his view that a man's right of disposal is a species of non-normative liberty of

action. In my view, a right presupposes a rule-governed institution which regulates the actions of men. A right is not a man's ability to do, or not to do, what he wills (with the aid of understanding). Nor is it based upon this ability. Rather, a right arises from one man's regulation of his conduct toward other men. This is a Humean view which can be defended.

Though my criticism has exposed the fact that Locke has a confused concept of "a right of disposal" (hence, of "an exclusive right of disposal"), we should note that his attempt to bring in the idea of a man's natural ability is not altogether misguided. On the contrary, as long as we rely on the informal, ordinary notion of "property", his attempt can be justified. By the ordinary notion, I mean "possessions". Etymologically, the word "possession" (pos-sessio) suggests the idea of sitting in power. The ordinary notion of "possession(s)" is, indeed, closely linked with the idea of "power" or "ability". Hume commented on this ordinary notion: "We are said to be in possession of any thing not only when we immediately touch it, but also when we are so situated with respect to it, as to have it in our power to use it; and may move, alter, or destroy it, according to our present pleasure or advantage." (THN, 506.) Here Hume expresses more clearly than Locke what he wanted to express: If we want to move it, we can; if we want to alter it, we can; and if we want to destroy it, we can. Hume states that the relation of a possessor to his object is "a species of cause and effect" (ibid.). In Locke's terminology, this is a species of an agent's power or liberty. He equated "property" with "possessions", and given this equation, it is understandable why he used a man's power as the core of his concept of property. Given the fact that we do, from time to time, use the word "property" in the sense of "possessions", we

cannot dismiss Locke's attempt to describe the core of the concept of property by Locution LL. Insofar as we equate "property" with "possessions", his concept seems to capture what we mean by "property".

On the other hand, however, "property" can be distinguished from "possessions" in many contexts. Typically, property is associated with de jure possessions or legitimate possessions, or with a right of property, whereas possessions are taken to be de facto possessions. Perhaps Locke would try to explain the distinction between "property" and "possessions" by appealing to the legitimate method of acquisition and exchange, if he were challenged to explain it. But in the Second Treatise, he simply does not draw a distinction between the two. Suppose, for the sake of argument, that Locke states that possessions acquired by a legitimate means are "property". But this does not help us understand what it means to "have a property in" a portion of the world. He might say two things: first, each man has a liberty to dispose of his goods within the bounds of the laws he is under; and secondly, those goods which have been legitimately acquired are called "property". Yet he cannot relate the two claims to form a new concept of property which is free from my criticism.

Locke's concept of property can be usefully used if we mean by "property" "possession(s)". But it is utterly useless and misleading if we use it in our discourse on what it means to have a right of disposal over certain objects. For it conflates a man's natural ability with his right, and makes each man's right dependent on his mind. If we wish to have a sound institutional analysis of property, we must develop a relational or triadic concept of property. I have already referred to Hume, and it is not amiss to quote his definition of property to indicate the right direction in which we should move.

Property may be defined, says Hume, as "such a relation betwixt a person and an object as permits him, but forbids any other, the free use and possession of it, without violating the laws of justice and moral equity" (THN, 310). This definition reveals the triad of one man, an object, and another man. Hume also offers a definition of property as the material possessions of a special kind: "Our property is nothing but those goods, whose constant possession is establish'd by the laws of society; that is, by the laws of justice." (THN, 491.) Here the constant possession of goods means one man's possession of goods without another man's interference, or the possession of those goods from which other men regularly abstain. An agent's liberty is incorporated into the notion of "possession". But property is defined by reference to the conduct of other men restrained by conventional rules, rather than an agent's power to do or not to do certain actions. These statements mark the end of ego-centric concepts of a right in the history of modern jurisprudence. Thomas Aquinas' "jus" - the objectively just state of affairs - begins to emerge in a completely secular dress.



# NOTES to CHAPTER 3

1. F. Hutcheson, A System of Moral Philosophy (Glasgow: R. & A. Foulis, 1755), p. 318.
2. G. Parry, John Locke (London: George Allen & Unwin, 1978), p. 50. Also, see his comment on Locke's "mixing" metaphor, ibid, p. 51.
3. For the criticism which shows the non-deducibility of Locke's conclusion, see Plamenatz and Day. Plamenatz, Man and Society (London: Longman, 1963), vol. 1, p. 245; J. P. Day, "Locke on Property", Life, Liberty, and Property, ed., G. Schochet (Belmont: Wadsworth, 1971), pp. 109f.
4. Most of the criticisms made by philosophers are of this type. Robert Nozick raised a question which has attracted other philosophical commentators: "But why isn't mixing what I own with what I don't own a way of losing what I own rather than a way of gaining what I don't?" Anarchy, State, and Utopia (New York: Basic Books, 1974), pp. 174f. Lawrence Becker tries very hard to extract from Locke possible answers to this question. He critically and somewhat tortuously reformulates them. See Becker, Property Rights: Philosophic Foundations (London: Routledge & Kegan Paul, 1977), Chapter 4.
5. It is easy to miss Locke's conflation of physical exclusiveness and an exclusive right. In ST, 28, Locke asks when the acorns (or apples) an Indian gathers "begin to be his" (i.e., his property). In this connection, he evokes the idea of physical exclusiveness by saying that "the nourishment is his". Locke is not the first to associate the exclusiveness of property with the "nourishment" a man gains from food. Samuel Rutherford's Lex, Rex (1644), the literature of the Puritan Revolution which expresses the Presbyterian Principles of Resistance, contains the following passage which Locke might have read:

it is morally impossible that there should  
not be a distinction between meum and tuum ....  
the division of things ... is thus far natural,  
that the heat that I have from my own coat and  
cloak, and the nourishment from my own meat,  
are physically incommunicable to any.

This passage is quoted from Woodhouse, Puritanism and Liberty (London: Biddles Limited for J. M. Dent, 1974), p. 208.

It goes without saying that the idea of an exclusive right is distinct from the idea of physical intransmissibility.

It is certainly conceivable that a man has a right over another man's "heat" or "nourishment". One man can conceivably have a right over another's body, or a part of his body, as it happens under slavery; hence, also a right over another man's "heat" or "nourishment". Locke, of course, claims that every man has a property in his person. Though this claim entails that every man has a right over his body, it does not alter the fact that Locke does conflate an exclusive right with physical exclusiveness in ST, 28.

6. For Grotius' and Pufendorf's concept of "a right" as "a moral quality", see section 2. 21 of this chapter and Appendix 3.
7. I have quoted their lists of our "own" objects in section 2. 31 of this chapter.
8. Such leading commentators as Laslett, Macpherson and Viner have been influential in drawing the distinction between the "broad" (or "extended") sense of "property" and the "narrow" sense. See Laslett's Introduction to his Two Treatises, pp. 101f., and his notes to ST, 27 & 87; Macpherson's comment in The Political Theory of Possessive Individualism (Oxford: O. U. P., 1962), p. 198; and Viner's review of Macpherson's book in The Canadian Journal of Economics and Political Science, 29 (1963), pp. 554ff. Chronologically speaking, Jacob Viner appears to be the first scholar in recent years who has drawn particular attention to the "two" senses of property. He awakened Laslett in this matter, as Laslett says in his Introduction, pp. 101f., note. Macpherson, in turn, seems to be indebted to Laslett. (For this, see Viner, op. cit., p. 556.) Though Viner is undoubtedly a historically acute scholar, the emphasis he placed on the distinction between the two senses has fixed the minds of successive Locke scholars. Consequently, the distinction has become a "customary" division, and we are no longer able to see clearly what Locke himself meant by "property", or how he used this word in the Second Treatise.
9. Olivecrona has rightly pointed out the pitfall of the Viner-Laslett-Macpherson doctrine of the two senses of "property". He says: "But it is turning things upside down to say that the meaning is 'extended' when life and liberty are comprised within a person's property". See Olivecrona, "Appropriation in the State of Nature: Locke on the Origin of Property", Journal of the History of Ideas, XXXV, 2 (1974), p. 220.
10. See my comment in section 2. 2 of this chapter, 2nd paragraph.
11. Day, "Locke on Property", op. cit., p. 118.

12. Yolton, Locke and the Compass of Human Understanding (Cambridge: C. U. P., 1970), p. 189.
  
13. Tully, A Discourse on Property (Cambridge: C. U. P., 1980), p. 109. Tully's extensive discussion on "personal identity" and "a property in a man's person" is deeply confused, and he is not even sure of the purpose of his own discussion. He does not see whether he is clarifying the meaning of the sentence, "I have a property in my person", or explaining why I have a property in my person.
  
14. I emphasize this point, because recent philosophers who try to rescue "human rights" by certain conceptions of personhood have a tendency to focus on Locke's concept of "person". Melden believes that Locke's concept of person is important for his political theory, and fails to see that his political theory is shaped by a particular, normative concept of "man" rather than any normative concept of "person". See Melden's discussion of the Second Treatise in his Rights and Persons (Berkeley: University of California Press, 1977), Chapter 7. The literature on Locke seems to be filled with false statements of the following type: every person, according to Locke, has certain natural rights. But it is, of course, a man who has natural rights.
  
15. In his critical account of the "narrowness" of the modern, Western concept of property, Macpherson claims that it is largely "an invention of the seventeenth and eighteenth centuries". Its narrowness consists in the identification of property with a "right to exclude others". Then he goes on to characterize Locke's concept of property as "exclusion", without even noticing the difference between a right to exclude others and a right of exclusive disposal. Macpherson, Democratic Theory: Essays in Retrieval (Oxford: O. U. P., 1973), Essay VI, pp. 122, 130, et passim.  

Tully distinguishes between an "exclusive" right and an "inclusive" right in order to elucidate Locke's concept of property. Though he correctly identifies Locke's locution "a property in" as indicative of an "exclusive" right, he misinterprets the meaning of Locke's "exclusive" right. He illustrates its feature as "a right to exclude others from using the same seat at the same time" (Tully, op. cit., p. 68).

Neither Macpherson nor Tully is sufficiently aware of the ego-centric structure of Locke's concept of property.
  
16. Locke's view on the mind-body relationship can be best characterized as an epistemology-oriented, moderately sceptical view. His scattered remarks in the Essay might give us the impression that he is merely confused. For instance, he says that it is "probable" that a single consciousness is annexed to one individual substance (II, xxvii, 25). This implies

that the mind is probably a mental substance. But the mind is said to be mobile, which implies that it can be located in space (II, xxiii, 19). There is also a famous passage in IV, iii, 6 where Locke claims that God can endow "matter" with the ability to think. However, Locke's position comes to be clearly defined in his controversy with Stillingfleet. He clearly expresses two views: the soul, or the mind, is probably an immaterial substance, and we cannot demonstrate that matter cannot think. (For Locke's reply to Stillingfleet, see Works IV, 457-83.)

These views must be treated as the product of Locke's moderate scepticism, or his epistemological reasonableness. In the Essay, he repeatedly suggests that we should be content with our limited knowledge, and our ignorance in metaphysical problems. See, for instance, his remark that we should be "satisfied with our Notion of immaterial Spirit", as much as "our Notion of Body" (II, xxiii, 32).

17. Locke briefly states his fundamental position at the beginning of his inquiry: "To the Question, what is it determines the Will? The true and proper Answer is, The mind. For that which determines the general power of directing, to this or that particular direction, is nothing but the Agent it self Exercising the power it has, that particular way". (Essay, II, xxi, 29). Then he goes on to discuss the heteronomous determination of the will by "uneasiness" at length (30-46). However, he suddenly reverts to his fundamental position - namely, the defence of the agent's autonomous determination of will - by bringing in the power of understanding. Locke states:

the greatest, and most pressing [uneasiness] should determine the will to the next action; and so it does for the most part, but not always. For the mind having in most cases, as is evident in Experience, a power to suspend the execution and satisfaction of any of its desires, and so all, one after another, is at liberty to consider the objects of them; examine them on all sides, and weigh them with others. In this lies the liberty Man has ... (II, xxi, 47).

Strictly speaking, Locke is inconsistent in holding that the will is "not always" determined heteronomously, and claiming that the mind "in most cases" suspends the heteronomous determination of the will. Yet as Locke repeatedly claims from II, xxi, 47 onwards, his central point is that a man's "understanding" makes him a self-determining (i.e., free) agent because it cuts off the heteronomous determination of the will. Thus Locke reaffirms his original position by resorting to the power of understanding.

18. I shall cite a few examples to show that many commentators on natural rights and Locke are seduced by the false image of natural rights arising from the law of nature.
- (i) Benn and Peters say: "For Locke, the state of nature was already a social state, governed by the Law of Nature, from which natural rights derived". See their Social Principles and the Democratic State (London: George Allen & Unwin, 1959), p. 97 (emphasis mine).
- (ii) A. P. d'Entreves remarks on Hobbes' concept of natural rights as exceptional, and contrasts it with Locke's. He says: To the "great majority of natural law writers in the seventeenth and eighteenth centuries", "natural law was the necessary presupposition of natural right. Locke ... makes the point very clearly". See his Natural Law, 2nd ed. London: Hutchinson, 1970), p. 62 (emphasis mine).
- (iii) J. W. Gough becomes a victim of the false image, though he is a professional Locke scholar. He remarks: "It might seem, then, that the law of nature embodies the principle of individual natural rights". Gough not only thinks that the law of nature seemingly embodies natural rights. But he also believes that it actually embodies natural rights. See his John Locke's Political Philosophy: Eight Studies, 2nd ed. (Oxford: O. U. P., 1973), pp. 21ff (emphasis mine).
- These commentators and countless others entertain the loose thought that natural rights are derived from, or founded on, the law of nature. They should at once quit commenting on Locke's concept of natural rights, or his place in the modern tradition of natural rights. It seems clear that they have not carefully studied Locke, nor his predecessors such as Hobbes, Grotius and Pufendorf. Didn't they ever read Locke's own statement that the law of nature "ought to be distinguished from natural right", because a right is grounded in a man's liberty whereas the law is "what enjoins or forbids the doing of a thing"? (ELN, I, 111.)
19. John Finnis, Natural Law and Natural Rights (Oxford: O. U. P., 1980), pp. 206ff. Finnis offers a brief account of the modern transformation of jus, referring to Suarez, Grotius and Hobbes. He also mentions Pufendorf and Locke as successors to this modern tradition of subjective, individual jus.
20. Gerson's statement, which I have quoted here, is found in Richard Tuck, Natural Rights Theorists: Their Origin and Development (Cambridge: C. U. P., 1979), p. 25. I have simply restated Tuck's view that Jean Gerson is the "first" theorist to define jus exclusively as a facultas or power. Tuck's view is, of course, not final. Further historical inquiry may alter it. Yet he made an important contribution to enhance our understanding of the history of "rights" (or "subjective rights" as they are called on the Continent, in contradistinction to "objective rights" or laws or norms).

Tuck also draws attention to other features of Gerson's account of jus which anticipate the 17th-century movement: the assimilation of jus ("a right") to libertas ("a liberty"), and the conceptual distinction between jus and lex. See Tuck, op. cit., pp. 26. He quotes Gerson's definition of lex: "Lex is a practical and right reason according to which the movements and workings of things are directed towards their ordained ends" (Ibid., p. 27). Given this definition and the definition of jus I have quoted, it seems to follow that jus is a facultas or power appropriate to someone and in accordance with a law. Tuck does not discuss how this idea came to be transmitted to Locke. But there must be a long chain of causes and effects which link Gerson with Locke, since their concepts of rights are strikingly similar.

21. L. Strauss, Natural Rights and History (Chicago: The University of Chicago Press, 1952), pp. 194ff. and n. 36 of p. 194.
22. In Appendix 2 of this dissertation, I have shown that three commentators on Locke — Max Milam, John Yolton, and James Tully — have fabricated various connections between the Second Treatise and the Essay. Those fabricators take a "foundationalist" approach to Locke's works, and falsify everything. In trying to link Locke's account of "liberty" in the Essay with his account of "liberty" in the Second Treatise, I am not ascribing to Locke the "foundationalist" picture of philosophy. For my detailed critique of the "foundationalist" approach to Locke, see Appendix 2 (Locke's Political Theory and its Epistemological Foundations: A Systematically Misguided Project).
23. Locke always held the view that the power of "understanding", rather than the power of "will", is — and ought to be — the ultimate controller of each man's actions. The primacy of intellect over volition was clearly stated in the first edition of the Essay, II, xxi, 30ff., as well as in the later editions of the Essay. Locke's clearest statement of the thesis of the primacy of "the understanding" can be found in the Conduct of Understanding:

The last resort a man has recourse to, in the conduct of himself, is his understanding: for ... the man, who is the agent, determines himself to this, or that voluntary action, upon some precedent knowledge, or appearance of knowledge, in the understanding.... The will itself, how absolute and uncontrollable soever it may be thought, never fails in its obedience to the dictates of the understanding (Works, III, sect. 1, p. 211).

24. The 20th-century English translation of Pufendorf's De Officio Hominis et Civis (by F. Moore, published as a part of the Classics of International Law) translates "intellectus" as "intellect". For this reason, the Locke-Pufendorf connection which I have stated may appear to be non-existent. However, the 17th-century (and 18th-century) English equivalent to the Latin word "intellectus" is "understanding" or "the understanding". Locke frequently referred to his Essay concerning Human Understanding as "Intellectus" or "De Intellectu" in his letters. Draft A of the Essay is headed, "Sic Cogitavit de Intellectu humano ..."; and Draft B bears such titles as "Intellectus" and "De Intellectu humano".

Having said this, I should like to quote a passage from the 1716 English translation of Pufendorf's work, and thereby substantiate my claim for the discovery of the connection between Locke's account of (true) liberty in the Essay and Pufendorf's account of "human actions" in De Officio Hominis et Civis. Pufendorf explains what he means by the expression "a Human Action" as follows:

By a Human Action we mean not every Motion that proceeds from the faculties of a Man, but such only as have their Original and Direction from those faculties which God Almighty has endow'd Mankind withall, distinct from Brutes, that is, such as are undertaken by the Light of the Understanding, and the Choice of the Will. For it is not only put in the Power of Man to know the various things which appear in the World, to compare them one with another, and from thence to form to himself new Notions; but he is able to look forwards, and to consider what he is to do, and to carry himself to the performance of it, and this to do after some certain Manner, and to some certain End; and then he can collect what will be the Consequence thereof. Beside, he can make a Judgment upon things already done, whether they are done agreeably to their Rule. ... [Some of] a man's Faculties ... are stir'd up in him by an internal Impulse; and when rais'd, are by the same regulated and guided. ... often, though an Object of Action be before him, yet he Suspends any motion towards it; and when many Objects offer themselves, he chuses one and refutes the rest.

(Quoted from The Whole Duty of Man, according to the Law of Nature (5th ed. with Barbeyrac's notes, English trans. by Andrew Tooke, Dublin: re-printed by Elizabeth Sadleir, for George Grierson, 1716), Bk I, Ch. 1, Sects. 2 and 3. I have preserved the punctuation, spelling, and emphases of this English translation.)

What Pufendorf calls "a human action" is equivalent to what Locke regards as the action of a free agent in the "true", rather than crude, sense. Pufendorf says that "often" a man "suspends" any motion toward the object of an action, just as Locke says that in "most cases", a man has a "power to suspend the execution and satisfaction of any of [his] desires" (Essay, II, xxi, 47). Pufendorf says that a man "chuses one" object of action and "refutes" the rest. Locke elaborates it by saying that a man has a power to "consider the objects of" his desires, "weigh them with others", and examine them till "the will" is determined to action (II, xxi, 47).

Pufendorf's De Officio Hominis et Civis is a little handbook which summarizes the main points of his De Jure Naturae et Gentium. Since Locke highly recommended both works to those who wished to study a general branch of politics, there is every reason to believe that he read them carefully. For his recommendation of Pufendorf's little book, see Works, III, 296; IX, 176; X, 308. It seems that Locke read Pufendorf's little book sometime during his stay in France, 1675-79. According to John Lough, "Locke's Reading during his Stay in France, 1675-79", The Library, 5th ser., VIII (1953), "Pufendorf de Cive" occurs in a list of 1678 (p. 255). It is not correct to say that a passage in Pufendorf's little book influenced Locke tremendously. But it is correct to say that Locke's account of liberty was inspired, at least in part, by his reading of Pufendorf's little book (and perhaps, his large book as well).

25. Pufendorf explains what he means by "a human action" in Bk. 1, Ch. 1 of De Officio Homines et Civis. Then he adds a new thought in Bk 1, Ch. 2, Sect. 1: "Because human actions depend upon the will, but the wills of individuals are not always consistent, and those of different men generally tend toward different things, therefore, in order to establish order and seemliness among the human race, it was necessary that some norm should come into being, to which actions might be conformed. For otherwise, if with such freedom of the will, and such diversity of inclinations and tastes, each should do whatever came into his head, without reference to a fixed norm, nothing but the greatest confusion could arise among men" (De Officio Hominis, 1, 2, 1).
26. For Locke's combination of a superior being's right and his causal power, consider another definition of "a law-maker": "one that has a superiority and right to ordain, and also a power to reward and punish according to the tenor of the law established by him" ("Ethics in general", King, Life, II, 133; emphasis added).



27. There has been a controversy among Locke commentators over the question whether Locke had an "intellectualist" (or "rationalist") theory of obligation as well as a "voluntarist" theory of obligation. This controversy takes its origin from von Leyden's Introduction to Locke's Essays on the Law of Nature, where Locke is interpreted to have suffered from the uneasy tension between the two theories. Dr. von Leyden's interpretation was uncritically accepted by Mabbott, in Chap. 12 of his John Locke (London: Macmillan, 1973). But it has been criticized by a number of subsequent commentators. Yolton has briefly criticized it in Ch. 7 of his Locke and the Compass of Human Understanding (Cambridge: C. U. P., 1970). The most recent, and perhaps the most detailed, criticism of von Leyden's interpretation can be found in John Colman, John Locke's Moral Philosophy (Edinburgh: Edinburgh University Press, 1983), Ch. 2.

I shall not go into the details of this interpretive dispute. But given the dispute, it is appropriate for me to state briefly what Locke's position is. He explains why the law of nature is binding on men, in the sixth essay of ELN. His account looks complicated because he discusses different types of obligation. Yet its outline is simple. The law of nature is binding because (a) God, the maker of the law, is indeed infinitely superior to men; and (b) He promulgated His will clearly in the whole of his creation. See ELN, VI, 183, 187, & 189. God's omnipotence, rather than his omniscience, is associated with the obligatory force of the law of nature. Locke nowhere says that it is binding on men because this law is rational, or because men's rational nature conforms to this law. What he does say is that it is reasonable that the law of nature is binding on men, because God is omniscient (ELN, VI, 183). The law is binding not because God is omniscient, but because God is omnipotent and willing.

Those who ascribe the "intellectualist" theory of obligation to Locke are mistaken. "Obligation", for Locke, is the "binding force" which arises from a pre-existing law-maker. The rudiments of Locke's thesis of demonstrable morality can be found in the seventh essay on the law of nature, titled "Is the Binding Force of the Law of Nature Perpetual and Universal? Yes". Locke mentions the "essential" and "immutable" or "eternal" order of things (as opposed to inconstant will); and he refers to the equivalence of "three angles" to "two right angles" (ELN, VII, 199). This talk, "rationalistic" as it is, has nothing to do with the binding force of the law of nature as such. The whole discussion of the seventh essay presupposes that the law of nature is binding on men. Locke is explicit about this: "We have already proved that this law is given as morally binding, and we must now discuss to what extent it is in fact binding" (ELN, VII, 193). In speaking about the immutable order of things and a triangle, Locke is trying to show that "if natural law is binding on at least some men" (as

it has already been proven), then "it must be binding on all men as well" (ibid., 199).

In Locke's mature works, we find his voluntarist (i.e., "superior will") theory of obligation on the one hand; and his rationalist theory of how to derive specific precepts of the law of nature, on the other hand. The former theory is found in Reasonableness, Works, VII, 140ff; "Of Ethics in general", King, Life, II; and various places of the Essay. The latter theory, a theory about how to derive definite precepts, consists of Locke's thesis of demonstrable morality in the Essay and his arguments for the thesis. There is a clear division in Locke's thought about "morality" or "the law of nature". He discusses "morality capable of obligation" as well as "morality capable of demonstration". The fundamental weakness of his moral (or legal) theory is that he does not show how one morality is related to the other morality.

28. Pufendorf, at one point, relates the notion of obligation to a superior's causal power to influence the wills of men. He thereby obscures the distinction which he himself has drawn between obligation and causal necessity. See De Jure Naturae et Gentium, I, 6, 9.
29. There are a few scholars who have discussed the relationship between Hooker's legal theory and Locke's. But their discussions are too brief, and somewhat misleading. See, for instance, Abrams' discussion in his Introduction to Two Tracts on Government (Cambridge: C. U. P., 1967), pp. 69ff; and Colman, op. cit., pp. 238ff. A solid scholarly account of the relationship of Hooker's legal theory to Locke's is yet to be written.

Hooker's legal theory, as I said, deals with the regular modes in which beings work toward a telos. It is not primarily a theory of obligation. Since Locke scholars seldom read Hooker, I shall quote passages from his Ecclesiastical Polity to prove that my characterization of his legal theory is correct. The following passage shows what his legal theory is about, and it also contains his definition of a law:

All things that are have some operation not violent of casuall. Neither doth any thing ever begin to exercise the same without some foreconceaved ende for which it worketh. And the ende which it worketh for is not obtained, unlesse the worke be also fit to obtaine it by. For unto every ende every operation will not serve. That which doth assigne unto each thing the kinde, that which doth moderate the force and power, that which doth appoint the forme and measure of working, the same we tearme a Lawe. So that no certaine end could ever be attained, unlesse the actions whereby it is attained were regular, that

is to say, made suteable fit and correspondent unto their end, by some canon, rule or lawe. Which thing doth take place in the workes even of God himselfe. (Quoted from The Folger Library Edition of the Works of Richard Hooker, Vol. 1, ed. G. Edelen (London/Cambridge, Mass.: The Belknap Press of Harvard Univ. 1977), Bk. 1, Ch. 2. 1.).

Hooker goes on to remark: God works according to a law, while the "being of God is a kinde of lawe to his working" at the same time. All "other things are "subject" to "some superiours" (Ibid., 1. 2. 2). The subordination of one kind of beings to another kind, which is mentioned here, is not important. For a law is not the command which a superior issues to an inferior being.

Hooker rejects the view, held by "the learned", that God has "set downe" an eternal law "as expedient to be kept by all his creatures". In his view, God "hath eternallie purposed himselfe in all his works to observe" an "order" (1. 3. 1). God, in other words, sets a law and operates according to it, in order to accomplish his work. Hooker refuses to confine "the name of Lawe unto that only rule of working which superior authority imposeth". "We", says Hooker, "somewhat more enlarging the sense thereof, terme any kind of rule or canon whereby actions are framed a law" (1. 3. 1).

Hooker does not endorse the "superior will" theory of obligation. His discussion of "obligation" itself is very cursory. "Lawes do not only teach what is good but they injoyne it, they have in them a certain constreining force" (1. 10. 7). Hooker tries to explain this constraining force, or the obligatory force, in terms of "the lawfull power of making lawes" (1. 10. 8). But this explanation itself takes place where he discusses the laws of political societies, and he is not very interested in explaining why the law God made is binding on men.

30. See Hume, Dialogues concerning Natural Religion, ed. Norman Kemp Smith (Indianapolis: Bobbs-Merrill, 1980).
31. See Mill's essay on "Nature", which is a part of his Three Essays on Religion (1874). Collected Works of John Stuart Mill, Vol. X, ed. F. E. L. Priestley (Toronto: University of Toronto Press, 1969), pp. 373ff. Mill says: it is "idle" to "exhort people to do what they cannot avoid doing", while it is "absurd" to "prescribe as a rule of right conduct what agrees exactly as well with wrong" (ibid., p. 379).

To disentangle Mill's compressed remark: First, we can break prescriptive laws voluntarily and thereby incur punishment, whereas we cannot break physical laws voluntarily. Secondly, prescriptive laws prescribe the difference between right and wrong to men, whereas physical laws describe what happens regularly in nature. These are simple, valid points.

32. I should like to indicate here that Locke's idea of "being left free" — the idea of negative freedom — is connected with his notion of a law-maker as having a greater causal power. In 1660, Locke wrote: the magistrate ought to consider the consequences of "those things which God hath left free before he determine them by his public degrees", and the subject ought to consider the consequences of "those things which the magistrate hath left free before he determine them by his private resolution". Then, says Locke, all men's "motions" would be confined "within their own sphere". (Quoted from F. Tract, 156.) Here the expression "left free" means the absence of the causal power of a superior law-maker.
33. Although Locke combines a non-normative liberty with a law, he retains the view that it is a species of the non-normative liberty. Among 20th-century libertarians, however, a more vulgar type of confusion can be found. A power, or an ability, to do what one wills is identified with "a right" without any qualification. See my comment on Murray Rothbard in Appendix 3, note 11. Rothbard holds that a man's "command over his body and actions" is "his natural ownership" (quoted in note Appendix 3, note 11). "A law" is not even hinted at! For another libertarian attempt to conflate a right of property with an ability to move one's body, see Samuel Wheeler III, "Natural Property Rights as Body Rights". Nous, 14 (1980), pp. 171-93.
34. G. W. Leibniz, New Essays on Human Understanding, abridged ed., trans. P. Remnant & J. Bennett (Cambridge: C. U. P., 1982), p. 384.

## CHAPTER 4

LOCKE'S LIBERALISM:

A Critical Assessment

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### LOCKE'S LIBERALISM:

#### A Critical Assessment

"Locke's Auffassung um so wichtiger, da er der classische Ausdruck der Rechtsvorstellungen der bürgerlichen Gesellschaft im Gegensatz zur feudalen und seine Philosophie überdiess der ganzen spätern englischen oekonomie zur Grundlage aller ihrer Vorstellungen diente."  
(Karl Marx, MEGA, II, 3. 6; S. 2120.)

("Locke's view is all the more important because it was the classical expression of bourgeois society's ideas of right as against feudal society, and moreover his philosophy served as the basis for all the ideas of the whole of subsequent English political economy."  
(Karl Marx, Theories of Surplus Value, Part I. trans. E. Burns.)

The discussion in this chapter is not intended to be comprehensive. Nor is it intended to be balanced. A full-scale critical assessment of Locke's liberalism would require a separate work, and a balanced judgement would be valuable only if we had passed imbalanced judgements. What I am going to say in this chapter is merely an introduction to a comprehensive critical work on classical liberalism which I intend to produce in the future.

I shall offer a simple criticism of Locke's liberal political theory on the basis of the interpretation I have presented in CHAPTER 1. There are many ways in which we can criticize his liberal political theory. But the best way to criticize it is to attack its basis, i.e., his account of appropriation, and see what happens to its political superstructure. In CHAPTER 1, I have shown in detail that Locke's account of appropriation is a MYTH. Isn't this a powerful criticism? Let us see.

## PART 1. A Disintegration of Locke's Myth of Appropriation

He "only did what philosophers are in the habit of doing — he adopted a popular prejudice and exaggerated it". (Nietzsche)<sub>1</sub>

### 1. 1 Introduction: A Confused Explanation and Exaggerated Beliefs

In expounding Locke's account of appropriation, I have emphasized that it is a myth which conflates facts and norms on the one hand, and the remote past and the 17th century on the other hand. (See pp. 28ff. & 77ff. above.) I have drawn attention to the mythical features of Locke's account in order to explain what he wrote. But I have also indicated that one kind of criticism can immediately arise from my exposition. This is a straightforward criticism that Locke's account of appropriation is intellectually obscure. Would any schoolboy pass an examination if he conflated the remote past and the present in the manner of Locke? No, unless the examination is an exercise in creative writing. Could a man claim that he has "explained" the origin of property "more clearly" than anyone else did before him, while he deceives us into believing that what ought to have happened actually happened? No, unless we abolish the distinction between a belief and an explanation. We must give a firm and resounding "no" to these questions, and free ourselves from the illusion that Locke's account of appropriation is an intellectually respectable account. To repeat, it is an intellectually obscure account of appropriation. This is the criticism which immediately springs from my exposition of Locke.

Nevertheless, Locke articulates his beliefs, his century's beliefs, and some of our century's beliefs about property very powerfully. Harold Laski once remarked that in offering an account of property,

Locke repeats "his century's insistence that a man's effort shall not be without its reward".<sup>2</sup> This remark, true as it is, somewhat underestimates Locke's status as an articulator of modern popular beliefs. Fox Bourne, a Victorian biographer of Locke, estimates his contribution as follows: "Locke propounded his very simple and incontrovertible doctrine that the right of property consists in labour and that alone .... It was a discovery almost as simple, and almost as evident when once stated, as Newton's discovery of the law of gravitation." (Bourne, Life, II, 173.) Bourne is certainly wrong in interpreting Locke as claiming that labour is the only ground of the right of property. Nevertheless, he is quite right in pointing out the simplicity and clarity of Locke's account. As a statement of beliefs about how property ought to be acquired, Locke's account is simple, clear, and persuasive. For who would deny that property ought to be acquired by one's honest labour rather than by one's dubious investment? And isn't it obviously wrong to take what another man has earned by his hard work? Locke's account of appropriation not only fascinated the Victorian Quaker; it also lingers on as a popular tradition today.<sup>3</sup> There is no doubt that Locke is one of the greatest articulators of modern popular beliefs about the acquisition of property.<sup>4</sup>

Thus Locke's account of appropriation is at once an intellectually confused explanation and a powerful expression of modern popular beliefs. This is not surprising. For in Chapter 5 of the Second Treatise, Locke seized upon popular beliefs and exaggerated them. Any exaggeration is at once an intellectually confused explanation and a powerful expression of beliefs. By his "exaggeration", I mean that Locke projected prominent features of the 17th-century world of labour, property and commerce to



a world of the distant past, and mixed what ought to happen with what actually happened. In short, he exaggerated his beliefs and tried to persuade us (obliquely) that men's possessions in the 17th century were the legitimate possessions which they, and their ancestors, had acquired by their labour, commerce and natural inheritance. In the beginning of the world, men acted like Robinson Crusoes; then in the successive period of growing commerce, men acted like those "thriving and industrious" men in 17th-century England; and finally, 17th-century Englishmen have acquired their present possessions by the legitimate methods of labour, commerce and natural inheritance. By putting Locke's account in this manner, we can see it as a gross distortion of the past. But since his account also expresses some of our beliefs about what ought to happen, we fail to detect the monstrosity of his distortion.

In order to criticize Locke's account of appropriation, we must treat it as something criticizable. The story which conflates what happened and what ought to happen cannot be criticized, unless we treat it as something other than a story. A myth, qua myth, cannot be criticized. I shall treat Locke's account of appropriation as a historical account. I shall then show that it is a defective historical account. This is the criticism I shall launch in Sect. 1. 2 below.

## 1. 2 Locke's Ideological Distortion of History

Locke attempts to establish the legitimacy of men's possessions, on the ground that those possessions are likely to have arisen in a legitimate manner. If the process of appropriation which he portrays in Chap. 5 of the Second Treatise had not actually taken place, then men's possessions — their current possessions — would lose their justificatory basis. Locke must rely on history. But his account of appropriation quickly disintegrates if we treat it as a historical account.

Some academic philosophers might wonder whether history is in any way relevant to Locke's enterprise. They might ask: Isn't Locke trying to justify the right of property rather than explain, or describe, how men actually acquired property? This is a tedious "philosophical" response, and I have already provided a detailed answer to this in CHAPTER 1. To repeat: Locke is trying to "justify" the right of property (i.e., men's exclusive rights of disposal over their current possessions) by showing that they have actually acquired their possessions by a legitimate method. A historical objection is certainly relevant. It is not only relevant but also fatal. If the actual course of history diverges from Locke's quasi-history, then he cannot establish the legitimacy of men's current (i. e., 17th-century) possessions. But the antecedent of this sentence is certainly true. I have said "Locke's quasi-history," and any "quasi-history" by definition is different from history. Hence, Locke cannot possibly establish the legitimacy of men's current possessions.

What I have said above rests on the assumption that Locke's account of appropriation is a quasi-history. This assumption is sound. But let us be specific, and take a look at the real history of appropriation. Every student of economic history, unless he is too lazy or brainwashed by bourgeois historians, knows what is called "primitive accumulation". It is a forcible expropriation of agricultural producers from the soil. "The history of this expropriation", says Karl Marx, "assumes different aspects" in different countries. But in England alone, it shows "the classic form".<sup>5</sup> In England, this expropriation began in the late 15th century, and continued until the early 19th century. It culminated in the Highlands of Scotland ("clearing of estates"). Locke's account of appropriation makes no mention of the violent

methods which were used to drive peasants out of their land, i.e., the land they cultivated. Locke's independent peasants (or "the yeomanry") peacefully carve their portions, and work diligently without spoiling their produce. Clearly, his account is one-sided. It excludes the disastrous aspect of the 17th-century economic life from view. Marx is one of the honest historians who described how the expropriation of agricultural producers had taken place. He made an appropriate remark: "In actual history it is notorious that conquest, enslavement, robbery, murder, briefly force, play the great part. In the tender annals of Political Economy, the idyllic reigns from time immemorial. Right and "labour" were from all time the sole means of enrichment."<sup>6</sup>

Whether we accept Marx's economic theory or not, his economic history is certainly valuable. Locke's account of appropriation is the first of "the tender annals of Political Economy". It conceals harsh historical realities. Hard-working, honest peasants were forcibly expropriated, before Locke concocted a fairy-tale which abstractly refers to the enclosure of the common land.

The ideological function of Locke's account of appropriation has not attracted much attention from recent commentators.<sup>7</sup> But obviously, an account like his serves to cover up the fact that vast tracts of North America were violently taken from the American Indians. Locke knows very well what are the driving forces of modern history — labour, privately-owned land, and commerce. He depicts the history of the world from the side of those active forces, and never sees the world from the side of those who were expropriated. His account of appropriation works as a powerful ideological drug, because it is abstract rather than concrete. God gave the world in common for their benefit and the greatest conveniences of their life, so "it cannot be supposed

he meant it should always remain common and uncultivated". He "gave it to the use of the Industrious and Rational" "not to the Fancy or Covetousness of the Quarrelsome and Contentious". "He that had as good left for his Improvement, as was already taken up, needed not complain" (ST, 34). As a general remark, this sounds like a morally sensible claim. Yet who are those "Quarrelsome and Contentious" people? Who complain that there is no land for "improvement"? It is fairly clear that Locke is alluding to those dispossessed peasants and preachers who loudly protested against the violent method of enclosure — the method which supporters of enclosure justified on the ground of "improvement".<sup>8</sup> I do not intend to criticize Locke for insinuating the objectionable view. It is not very wise to base our criticism on one or two criminal allusions. But my point is that the abstract, idealized picture of appropriation which Locke presents in Chap. 5 of the Second Treatise conceals the real violence and injustice that took place in the past. The events he portrays in Chap. 5 are not concrete historical events; they are abstract events that take place in an undatable, remote, 17th-century-like past. They are, in short, the chimeras of Locke's brain. They are the products of his exaggeration. We must reject them on historical grounds. We shall not let his chimeras rule. Let us always remain good empiricists as Locke officially taught!

I have raised only one historical objection (other than the case of American Indians), and developed it into a critique of Locke's ideology. We might raise more historical objections by presenting various communal forms of ownership that existed in different parts of the world. Those objections would effectively show how artificial and one-sided Locke's account of appropriation is. But let us take a closer look at

the history of the expropriation of the agricultural population. We should take a look at concrete details of this history, in order to emancipate ourselves from Locke's ideologically distorted picture of appropriation. This history is a prelude to the emergence of a free-market economy. But according to Locke's idealized account, a free market emerges out of the prior primitive economy of independent peasants without any forcible expropriation of the peasants. If we over-concentrate on his distorted account in order to discuss his abstract claims and "arguments", we are likely to become victims of his ideology. In fact, quite a few philosophers and political theorists remain addicted to Locke's idyllic picture of appropriation. They cannot turn away from it. We must put an end to this sort of philosophical disease. To do this, we shall stop thinking for a while and start looking at what happened. Marx offers us invaluable help. He gives a reliable account of the expropriation of the agricultural producers, and the consequent "bloody legislation" against vagabonds, beggars, and paupers. My purpose here is not to provide a detailed economic history of expropriation in modern England, but to look at a few concrete events in order to put an end to our addiction to Locke's ideological drug. I shall use Marx to look at a few concrete events, and try to bring about a Wittgensteinian effect. It should be noted that Marx's historical account of this matter, unlike many other theoretical claims of his, has never been seriously disputed.

In the last third of the 15th, and the first decade of the 16th century, a mass of free proletarians was hurled on the labour-market by "the breaking-up of the bands of feudal retainers".<sup>9</sup> The rise of absolute monarchy quickened the dissolution of these bands of retainers, but "the great feudal lords created an incomparably larger proletariat

by the forcible driving of the peasantry from the land, to which the latter had the same feudal right as the lord himself, and by the usurpation of the common lands". The rapid rise of Flemish wool manufacturing, and the corresponding rise in the price of wool in England, "gave the direct impulse to these evictions". The new nobility transformed arable land into sheep-walks for the sake of profit. This is the first enclosure of the late 15th century and the 16th century. Thomas More made it very famous. The dwellings of the peasants and the cottages of the labourers were razed to the ground or doomed to decay. In the words of Thomas More: "your shepe that were wont to be so meke and tame, and so smal eaters, now, as I heare saye, be become so great devourers and so wylde that they eate up, and swallow downe, the very men themselves." Francis Bacon observed the effect of the enclosure: "Inclosures at that time (1489) began to be more frequent, whereby arable land ...was turned into pasture ...; and tenancies for years, lives, and at will (whereupon much of the yeomanry lived) were turned into demesnes. This bred a decay of people, and (by consequence) a decay of towns, churches, tithes, and the like." The process of forcible expropriation received in the 16th century "a new and frightful impulse from the Reformation, and from the consequent colossal spoliation of the church property". The estates of the church were given away, or sold at a nominal price, to "speculating farmers and citizens, who drove out, en masse, the hereditary sub-tenants and threw their holdings into one". The poor had a legally guaranteed property in a part of the church's tithes, but this was tacitly confiscated.

Now this process of expropriation, which took place in the end of the 15th century and the whole of the 16th century, was accompanied by a series of legislative measures against the expropriated. Those

men who were suddenly dragged from their customary mode of life could not quickly adjust themselves to the discipline of their new condition. The nascent manufacturing industry could not absorb them quickly. "They were turned en masse into beggars, robbers, vagabonds, partly from inclination, in most cases from stress of circumstances."<sup>10</sup> A brief look at the laws against vagabondage reveals the fate of those agricultural people who had been forcibly expropriated from the soil. Those laws treated vagabonds and paupers as "voluntary" criminals, and assumed that "it depended on their own good will to go on working under the old conditions that no longer existed". The law under the reign of Henry VII (1530) stipulated that beggars old and unable to work ought to receive a beggar's licence, and that sturdy vagabonds are to be tied to the cart-tail and whipped until the blood streams from their bodies. They are to swear an oath to go back to their birthplace, or to where they have lived the last three years, and to "put themselves to labour". A statute of the first year of the reign of Edward VI (1547) ordains that if anyone refuses to work, he shall be condemned as a slave to the person who has denounced him as an idler. The master has a right to force his slave to do any work, no matter how disgusting, with whip and chains. A law under the reign of Elizabeth (1572) states that unlicensed beggars above 14 years of age are to be severely flogged and branded on the left ear unless someone will take them into service for two years. If they are over 18 and repeat the offence three times, they are to be executed without mercy. Thus "the agricultural people, first forcibly expropriated from the soil, driven from their homes, turned into vagabonds, and then whipped, branded, tortured by laws grotesquely terrible, into the discipline necessary for the wage system".

This is the short history of expropriation in the late 15th and 16th century. Let us now take a quick look at the 17th century, Locke's own century. Here I shall make use of R. H. Tawney's history.<sup>11</sup> Enclosures in the 17th century proceeded primarily for the sake of grain rather than wool. Peasants were expropriated for the purpose of efficient agriculture or high productivity. Depopulation and pauperism were burning issues. The Levellers issued a petition: "you would have laid open all enclosures of fens and other commons, or have them enclosed only or chiefly for the benefit of the poor." Winstanley expressed his theoretical communism. In several Midland counties "the peasants rose to pull down the hated hedges. At Leicester, where in 1649 there were rumours of a popular movement to throw down the enclosures of the neighbouring forest, the City Council took the matter up. A petition was drafted, setting out the economic and social evils attending enclosure, and proposing the establishment of machinery to check it." In the latter half of the 17th century, however, the pro-enclosure trend became strong, and it discredited the prevention of enclosure and the policy of protecting the peasants as "the programme of a sect of religious and political radicals". In 1656 Major-General Whalley introduced a measure to regulate and restrict the enclosure of commons. There "was an instant outcry from members that it would 'destroy property', and the bill was refused a second reading". In 1656 Joseph Lee wrote A Vindication of a Regulated Enclosure, and expressed the view that the pursuit of economic self-interest within an enclosed tract of land leads to "the advantage of the public". Pro-enclosure pamphleteers of the 17th century resemble the pro-privatization propagandists of the 1980's in that they defended enclosures on the ground of productivity, and believed in the pre-established harmony of the private interest and the public



interest. 17th-century defenders of privatization also resemble our 20th-century defenders in taking a simple-minded approach to social problems — unemployment and pauperization. Like our 20th-century defenders, they repeated certain quasi-religious slogans about the idleness of the poor, and were determined to punish criminals as severely as possible. In 1649, Parliament passed an Act for the relief and employment of the poor and the punishment of beggars. As Tawney reports, a company was to be established under this Act "with power to apprehend vagrants, to offer them the choice between work and whipping, and to set to compulsory labour all other poor persons, including children, without means of maintenance". The expropriated were forced to choose between two hideous alternatives.

Having seen the grotesque history of expropriation from the late 15th century to the 17th century, we shall now return to Locke's account of appropriation. In short, it is a grotesquely one-sided account of appropriation. Historically speaking, the appropriation of land proceeded side by side with the expropriation of people. Locke focuses on the process of ap-appropriation, i. e., the process of annexing or fixing something of one's own to a portion of the external world. And he ignores the process of ex-appropriation, i. e., the process of dispossessing another man, or driving him out. How could he ignore this process of expropriation? Did he not know that enclosures were causing social unrest in one part of the community and economic prosperity in another part? He certainly knew it. He simply thought that enclosures could be justified on the ground of productivity and commercial growth, and refused to say anything specific about the expropriation, depopulation, and pauperization. Here is Locke's unambiguous argument for agrarian enclosure: "he who appropriates land to himself by his labour, does

not lessen but increase the common stock of mankind. For the provisions serving to the support of humane life, produced by one acre of inclosed and cultivated land, are (to speak much within compass) ten times more, than those which are yeilded by an acre of Land, of an equal richnesse, lyeing wast in common." (ST, 37.) This argument echoes Joseph Lee's view that private property brings benefits to the public. Like other pro-enclosure pamphleteers, Locke qualifies his support for enclosures in a lukewarm manner: "no one can inclose or appropriate any part [of the common land in England] without the consent of all his Fellow-Commoners," and "after such inclosure, [there] would not be as good [land left] to the rest of the Commoners" (35). These statements should be taken to mean that enclosures in a political society ought to proceed with parliamentary approval, and somewhat moderately to avoid injury. His basic position is: privatize and let commercial agriculture flourish! As for the so-called "social cost", Locke merely gestures toward "the Quarrelsome and Contentious". He says that there was little room "for Quarrels or Contentions about Property" in the beginning of the world (31, 39, 51). We might say that his remark on the beginning of the world is irrelevant to the trouble of 17th-century England. But Locke is suggesting here that there are many quarrels and contentions about property in England. By contrast, there was little room for them in the remote past. He simply avoids commenting on specific problems of enclosures. Instead, he deliberately transports men to the remote past and to the American Continent, and shows that men could appropriate the world without injuring — a fortiori, without dispossessing — other men. "America" is an important device for Locke, since there was plenty of land and (despite American Indians) it was possible for men to acquire property without dispossessing others.

But never mind! Locke's chief task is to establish the legitimacy of landed property in 17th-century England, rather than landed property in 17th-century America or in the world which existed in the beginning.

Locke uses curious theoretical entities. They are half historical and half imaginary. The world God gave to mankind "in common" is sometimes 17th-century America, and sometimes the common land in England, and sometimes a more abstract entity. Independent peasants in the beginning of the world look like yeomen in 17th-century England, though they are supposed to live in the world like 17th-century America. All sorts of images can be found in Locke's account of appropriation. Well, he may use various kinds of curious theoretical entities to write a story and please small children in America. The story of appropriation similar to Locke's is found in The Reader's Digest from time to time. So his story would please adults in a dentist's waiting room, too. Yet he cannot possibly establish the legitimacy of 17th-century Englishmen's possessions by his story. The reason is simple. The process of appropriation which took place in modern history is quite different from what Locke's story leads us to believe, and his justification of men's possessions in 17th-century England rests on the historicity of the events he describes.

I should like to conclude my discussion of Locke's ideological distortion by making two additional remarks. First, I shall not deny that Locke's account might plausibly establish the legitimacy of a part of 17th-century men's possessions. Despite its ideological distortion, his account is based on the observation of the active side of 17th-century English economy. Quite a few active men acquired their possessions by their labour, and expanded them by means of commerce. It would be

foolish to deny this economic fact. The problem with Locke is that he seized upon this active side of 17th-century English economy and exaggerated it, while he completely ignored the dark side of the same economy. But he might try to defend a weaker claim. He might claim that at least a part of men's possessions in 17th-century England are legitimate because they have been acquired by their labour and voluntary exchange. To defend this claim, Locke must first show why men's possessions can be legitimized by their labour and voluntary exchange. He must then point out that quite a few men did in fact acquire their possessions by their labour or voluntary exchange, and that their acquisition was not directly linked with the injury another man had received (above all, the expropriation of another man). This line of defence is open to Locke, and he might plausibly establish the legitimacy of a portion of 17th-century men's possessions. I say "plausibly" because it is impossible to specify which portion of their possessions are legitimate or which portion illegitimate. What I have attacked above is Locke's attempt to justify the whole of men's possessions in 17th-century England on the ground of their labour and voluntary exchange. Unless we are very dishonest or deeply deceived, we cannot make an attempt of this sort.

Secondly, I should like to make additional remarks on the one-sidedness of Locke's account of appropriation. I have said that it is one-sided because it excludes the concomitant process of expropriation. There are other kinds of one-sidedness. For instance, Locke asks where men's properties come from, and answers that they come from men's "industry" or industriousness. But he never asks where those industrious men come from. Likewise, he never asks where lazy rascals come from (or where those "contentious and quarrelsome" people

come from). Locke takes industriousness or idleness as the end-point of his explanation, and produces a sermon-like explanation which lacks explanatory power. This one-sidedness is nowhere more evident in his proposal of a new Poor Law of England. As a commissioner of trade and plantations, Locke wrote a proposal to reform the Elizabethan Poor Law. Just like other 17th-century proposals, his proposal is an appalling pre-Dickensian document. In the beginning of the proposal, Locke states that growing pauperism has nothing to do with a "scarcity of provisions" or the "want of employment for the poor". It is solely caused by "the relaxation of discipline and corruption of manners; virtue and industry being as constant companions on the one side as vice and idleness are on the other" (Bourne, Life, II, 378). This statement, one might say, is a characteristically Puritan statement in the latter half of the 17th century. But it clearly represents the one-sided, sermon-like quality of Locke's explanation. In his proposal, he harshly condemns "idle vagabonds" without offering even a rudimentary account of the genesis of those idle vagabonds. This self-deceptive procedure has a counterpart in Chap. 5 of the Second Treatise. There Locke highly praises rational and industrious appropriators, without paying any attention to the process of expropriation by which idle vagabonds came into being.

One-sidedness is a feature of all ideological distortions. The one-sidedness of Locke's account of appropriation is not merely an academic matter. In order to give up his ideological drug, we must see the point where Locke's ideological distortion of history turns into an obscenely righteous attitude. Here I use a strong expression, because I believe we must give up his ideological drug. Locke's one-sided account of appropriation turns into his obscene

righteousness, when he discusses "the more effectual [method] of restraining idle vagabonds" (Locke's proposed reform of the Poor Law; Bourne, Life, II, 379). What are the proper measures of punishment—the measures which would properly restrain the corrupt manners of beggars? Locke "humbly propose[s]" the following:

all men begging in maritime counties without passes, that are maimed or above fifty years of age, and all of any age so begging without passes in inland counties nowhere bordering on the sea, shall be sent to the next house of correction, there to be kept at hard labour for three years.

....

whoever shall counterfeit a pass shall lose his ears for the forgery the first time that he is found guilty thereof, and the second time that he shall be transported to the plantations, as in case of felony.

....

if any body or girl, under fourteen years of age, shall be found begging out of the parish where they dwell ..., they shall be sent to the next working school, there to be soundly whipped and kept at work till evening, so that they may be dismissed time enough to get to their place of abode that night.

(Quoted from Bourne, Life, II, 380f.; emphasis added.)

The severe measures of punishment which Locke proposes should not surprise us. Punishment was harsh in the 17th century. And the quoted statements are consistent with Locke's definition of "political power" in the Second Treatise, i.e., "a Right of making Laws with Penalties of Death, and consequently all less Penalties, for the Regulating and Preserving of Property" (ST, 3). We should assess these statements about punishment in a historical context. Locke was proposing the measures of punishment which were practical in a specific historical context. Nevertheless, we must understand that Locke's "humble" proposal — the proposal which he proudly undertook to write—supports, and is supported by, the kind of one-sided account of appropriation which he presents in the Second Treatise. He might not have proposed such harsh measures of punishment, if he had freed himself from the chimerical belief that

appropriation proceeded without expropriation. Locke's humble proposal of the harsh measures against idle vagabonds and his self-congratulatory account of appropriation are the two sides of a distorted picture of 17th-century economic society. I am certainly aware that strict measures of punishment had to be introduced to combat the growing pauperism of the late 17th century. But I find it deeply disturbing — and disgusting, at bottom — that Locke discussed the problem of punishment under the illusion that property in 17th-century England had arisen without the expropriation of people.

Locke's account of appropriation is a bold attempt to express this illusion, the illusion of the modern epoch. Was he a cunning theorist? No, not at all. Clearly, he needed this illusion to defend a violence-free economic society of property-owners against arbitrary government. Unless men's possessions in 17th-century England are shown to be legitimate independently of any political authority, the supreme political agent may handle their possessions arbitrarily. This is why Locke tried to establish the pre-political legitimacy of men's possessions. In trying to establish this legitimacy, he placed himself under the illusion that those possessions arose legitimately without the expropriation of people. Without this illusion, he could not claim that the state ought to administer justice to protect one man's legitimate, present possessions — his property — against the violence of other men. Locke's claim about the state's administration of justice is opposed to arbitrary government, and this claim required him to remain under the illusion. I shall later show that there is a way in which we can defend his claim about the state's obligation of justice without holding on to his illusion. So let us emancipate Locke and ourselves from the illusory, idyllic picture of appropriation.

Locke's liberalism, as it stands, rests on the self-deceptive belief that men's current possessions are the consequence of the legitimate acquisition and exchange of goods in the past. Our historical objections can remove this self-deceptive belief. Once this belief is removed, two important consequences follow. First, we can no longer enjoy Locke's account of appropriation as a story. We will either discard it in toto or reconstruct a pure normative theory of property acquisition out of the original story. In recent years, several English-speaking philosophers have attempted to construct a pure normative theory (what is known as a justificatory theory). (See my discussion in CHAPTER 2, Sect. 1. 2.) Since Locke powerfully expressed the beliefs of the modern age of which we are still a part, some such normative theory might be constructed to confirm our beliefs. I do not think that this sort of reconstruction is an intellectually healthy exercise. But at any rate, the point is that this sort of reconstruction ("justificatory arguments", etc.) takes place only after Locke's original myth of appropriation has disintegrated. Now the second important consequence which follows from our historical objections and the removal of the self-deceptive belief is the following: Locke's theory of the state disintegrates. With the erosion of the economic basis, Locke's political superstructure also begins to crumble. We shall see this in PART 2.



## PART 2. A Disintegration of Locke's Theory of the State

"Why, then, to this other question: What is property? may I not likewise answer, It is robbery ...."  
(P. J. Proudhon, What is Property? Chap. 1.)

"[T]heir first difficulty ... is how to separate their possessions, and assign to each his particular portion, which he must for the future inalterably enjoy. This difficulty will not detain them long; but it must immediately occur, as the most natural expedient, that every one continue to enjoy what he is at present master of, and that property or constant possession be conjoin'd to the immediate possession. Such is the effect of custom ...." (David Hume, THN, III, ii, 3, 503.)

"Wherever there is great property, there is great inequality. For one very rich man, there must be at least five hundred poor, and the affluence of the few supposes the indigence of the many. The affluence of the rich excites the indignation of the poor .... It is only under the shelter of the civil magistrate that the owner of that valuable property, which is acquired by the labour of many years, or perhaps of many successive generations, can sleep a single night in security.

....

Civil government, so far as it is instituted for the security of property, is in reality instituted for the defence of the rich against the poor, or of those who have some property against those who have none at all."  
(Adam Smith, The Wealth of Nations, Bk V, Ch I, Pt II, The Canan ed., pp. 670 & 674.)

Let us suppose that we provided Locke with abundant historical evidence, and made him see that he had been deceived by the chimera of his own brain. He must admit that a sizeable portion of 17th-century landed property is based on the robbery, violence, and injustice of the past. He may still be able to justify a part of 17th-century men's possessions on the grounds of their labour, commercial exchange, and natural inheritance. But he cannot possibly justify the whole of their possessions on the same grounds. We have restored the virtue of honesty to Locke by making use of his favourite principle of

empiricism. Only a part of 17th-century men's possessions are "legitimate" by the natural criteria of legitimacy Locke uses; namely, the criteria of labour, voluntary exchange (including the use of money and the performance of a contract) and inheritance. Only a part of their possessions are to be called their "property" in the proper, de jure sense of the word. The rest of their possessions may be called "improperty". Some theorists deliberately call this "improperty" "property". Proudhon is a good example. He calls "improperty" "property", and then offers that famous proposition which is at once shocking and tautological: property is theft.

Once we remove Locke's chimerical belief, then we have to revise his own statement of the purpose of the formation of a political society. There seem to be at least two ways in which we can revise his statement. First, since men form a political society for the purpose of the effective protection of their exclusive rights, we shall state that their purpose is to protect their lives, liberties, and only those possessions which they and their ancestors have acquired and exchanged legitimately. Men's "improperties" — the sizeable portion of their current possessions which arose out of the robbery, violence, fraud, and murder of the past — would have to be redistributed to numerous injured parties so that the natural or ideal criteria of legitimacy would be perfectly satisfied. Their illegitimate possessions would have to be redistributed to bring about the naturally just pattern of distribution. Locke's liberalism, thus revised, may be called a priori liberalism. The nomenclature "a priori liberalism" is mine, and the name suggests that this is a liberal analogue of a priori socialism (or utopian socialism). It is difficult to find a sincere supporter of a priori liberalism, and Locke certainly does not defend

this utopian position. But this is a theoretically possible position. It might be defended after Locke's chimerical belief has been removed. Robert Nozick is a recent defender of a priori liberalism. I shall quote what he says in order to illustrate this utopian position:

The existence of past injustice ... raises the third major topic under justice in holding. If past injustice has shaped present holdings in various ways, some identifiable and some not, what now, if anything, ought to be done to rectify these injustices? ... Idealizing greatly, let us suppose theoretical investigation will produce a principle of rectification. This principle uses historical information about previous situations and injustices done in them ... and information about the actual course of events that flowed from these injustices, until the present, and it yields a description (or descriptions) of holdings in the society. The principle of rectification presumably will make use of of subjunctive information about what would have occurred (or a probability distribution over what might have occurred, using the expected value) if the injustice had not taken place. If the actual description of holdings turns out not to be one of the descriptions yielded by the principle, then one of the descriptions yielded must be realized.<sup>12</sup>

Shall we revise Locke's liberalism into this type of a priori liberalism? This a priori liberal position is hopelessly impractical, and to take this position would mean to move from Locke's chimerical fusion of "is" and "ought" to an armchair theorist's chimerical belief about "subjunctive information" ("a probability distribution", etc.). As Locke himself remarked long ago in one of his papers, in "civil society one man's good is involved and complicated with another's" (King, Life, II, 114). Anyone who reads Mandeville and Hume can understand that justice and injustice, virtue and vice, etc. are inextricably linked in a civil society. Nozick confesses that he is "idealizing greatly". Indeed, he is idealizing greatly! He knows at bottom that his proposal is impractical. He actually gives no "principle of rectification". He even says: "I do not know of a thorough or theoretically sophisticated

treatment of ... issues" about the rectification of past injustices.<sup>13</sup> The a priori liberal position is not only impractical, but illiberal (by the criteria of classical liberalism adopted by Locke, Smith, Hume, et al.). Is the state going to rectify past injustices on a large scale, in order to bring about the naturally just pattern of distribution? Robert Nozick may have inherited the possessions which his ancestors had forcibly taken from American Indians. If the state were to re-distribute the present possessions by relying on the unreliable "subjunctive information", it might have to coerce Nozick and many others to an intolerable extent. Historically speaking, liberalism defended men's present possessions against arbitrary government. By this criterion, a priori liberalism does not count as liberalism. Of course, liberalism can change and has undergone various changes since the time of Locke. But the revision which Nozick suggests can hardly be accepted. His philosophical device and jargon serve to cherish the dream which can never be realized, whereas he — or anyone who plausibly talks about "rectification" without a practical device — can comfortably enjoy the sense of moral righteousness. In short, Nozick's a priori liberalism is an ideology which makes him feel comfortable and puts him in the perpetual state of deception. Let us throw away this rubbish, and consider the second possible revision of Locke's liberalism.

The second revision is the following. Since men in Locke's view form a political society in order to preserve their present possessions as well as their lives and liberties, we may restate the purpose of a political society as follows. Men form a political society in order to protect their lives, liberties, and present

possessions, even if their present possessions have arisen from an illegitimate process of acquisition and exchange. Locke's liberalism, thus revised, becomes unambiguously conservative. This position more or less corresponds to the liberalism of David Hume and Adam Smith. Unlike Locke who boldly expresses his beliefs, Hume and Smith are the philosophers who "observe everything" and "do nothing". They are relatively free from the kind of deception which Locke suffers. Hume knew very well that "there is no property in durable objects, such as lands or houses, [which has not been] founded on fraud and injustice" "when carefully examined" ("Of the Original Contract", GG, I, 456). Smith knew very well, as I have quoted in the beginning of PART 2, that wherever "there is great property, there is great inequality". Like Locke, Hume and Smith are concerned to defend a government of laws which protects men's current possessions. Needless to say, constitutionalism is a conservative doctrine in the sense that a government of laws preserves the rights and possessions which men already enjoy. It retards any rapid change (e.g., the emergence of a dictator like Hitler, or the improvement of the living conditions of the deprived). Shall we seize upon Locke's constitutionalism, and ignore what appears to be (though not what is) his defence of the ideal rights of men, i.e., the rights men ought to have? If we do so, then we get the view that the state ought to dispense justice for the purpose of preserving men's present possessions, though their present possessions may be based on the injustice, fraud, and violence of the past. The state does not try to redistribute the whole of men's "improperties" according to the independently available set of natural criteria (as Nozick suggests). Rather, the state tries to settle, in a piecemeal fashion, those individual disputes and complaints which

arise out of specific historical contexts (rather than abstract theoretical contexts invented by armchair theorists). This is certainly Locke's view of justice. So it seems that he can revise his liberalism in this direction. But can he really revise it?

The word "revision" is inappropriate here. What Locke must do in order to defend his claim about the state's obligation of justice is to abandon his account of appropriation, and offer an alternative account of why men have rights over their present possessions. In other words, he can defend his theory of the state (i.e., one half of his liberalism) only if he abandons his account of appropriation (i.e., the other half of his liberalism). Since actual history is quite different from Locke's description of appropriation in Chap. 5 of the Second Treatise, he cannot justify men's current possessions in toto by using his account. But the claim about the state's obligation to administer justice presupposes men's rights. "Corrective justice" presupposes that men have rights independently of any positive law. So Locke must offer an alternative account of why men have rights over their current possessions, i.e., the possessions which are based on the injustices of the past. He cannot simply assert that the state ought to preserve men's possessions by laws, though those possessions are largely the consequence of the rogues in the past. He must show that despite the robbery and violence which took place in the past, men have rights over their current possessions, independently of any positive law. This is what his account of appropriation cannot explain. Hume's account of the origin of property and justice may serve as an alternative, since it presumes that property and justice arise out

of the violence which men do to one another's possessions. The "rule concerning the stability of possession" (i.e., the fundamental rule that one must abstain from another man's possessions), according to Hume, "acquires force by a slow progression, and by our repeated experience of the inconveniences of transgressing it" (THN, 490). Ultimately, "the interest of the society" justifies men's rights over their current possessions (This "interest", or what "is" "between" men, is not the quantifiable utility of a Benthamite kind. Hume's "public interest" is not quantifiable. It is what Locke calls "the public good", and what Aristotle and Hooker called "the common good".) Hume also gives a psychological account of why men attach the idea of property to what they possess now, what they possessed first, or they have possessed for a long time, etc. (See my quotation from Hume about men's current possessions, p. 350 above.) It is possible to use Hume's alternative account, or any other viable alternative, to explain why men have rights over the goods whose origin is dubious or violent. But as I said, if we use an alternative and defend Locke's claim about the state's obligation to administer justice, then we must abandon one half of his liberalism — his account of appropriation.

I have considered two possible ways in which we can change Locke's statement about the purpose of a political society. Let us be perfectly clear about his own position. He himself does not have to choose between a priori liberalism and the classical liberalism of Hume and Smith. The reason, as I have already emphasized, is that he believes and leads us to believe that men's current possessions are their "properties" by virtue of the fact that they, and their ancestors, have acquired or exchanged legitimately. Once this belief

is removed, Locke's liberal political theory begins to disintegrate. The species of liberalism I have discussed are two of the possible forms of liberalism which emerge after it is desintegrated. Of course, there are other forms of political thought which can be constructed out of reinterpretations of small fragments of Locke's account of appropriation, or his theory of the state. Anarchism and socialism can emerge out of the earlier part of his account of appropriation, if the part is taken in isolation and then combined with some un-Lockean principles of **abstract**, ideal rights, or distributive justice. Or Locke's talk about "the public good" can be reinterpreted, and his account of appropriation may be completely ignored. Then we will get welfare-statism. But let us not distract our **attention** from the two species of liberalism. They represent the disintegration of Locke's liberal political theory most clearly. A priori liberals claim that the state should redistribute men's possessions in order to rectify the injustices of the past, or to actualize the rights men ought to have. The state ought to bring about men's ideal rights. This is, of course, not Locke's position. He does **not** discuss anything like ideal rights (though confused commentators often treat him in this way). Nevertheless, the normative strand (rather than the factual strand) of his account of appropriation can be interpreted to express the view that men should have rights though they actually do not have them. Hence, Locke can be turned into an a priori liberal who defended ideal rights (or "natural rights" in the popular, un-Lockean sense), or the rights men ought to have. If the normative strand of his account of appropriation is separated from its factual strand, then his



liberalism goes on to survive in various forms of a priori liberalism. But Locke cannot claim that the state should actualize men's ideal rights. His central claim of the state is that the state ought to eliminate the mutual violation of rights among men, where their "rights" are not the rights which they should have ideally. The state ought to preserve the rights which men actually have in 17th-century economic society. In short, the claim of a priori liberalism conflicts with Locke's claim about justice. The normative strand of his account of appropriation (i.e., the view that every man should have a **right** to own the goods he has mixed with by his labour, ideally speaking) conflicts with the claim about justice which concerns men's de facto possession. Property, taken in the de jure sense and distinguished from "improperty", conflicts with justice. On the other hand, if Locke tries to adopt the classical-liberal position of Hume and Smith and affirms that men's current possessions (especially, land) are based on the violence and robbery of the past, then he can defend the claim about justice which concerns men's de facto possessions. But in this case, he must (as I have said above) abandon his account of appropriation and adopt a new account to establish the pre-political legitimacy of men's current possessions.

What does this disintegration mean, then? Locke's classical liberalism maintains that there is a harmony between private "property" and public "justice". But once we remove his deceptive belief about the identity of what ought to happen and what actually happened, this harmony breaks down. Property, as distinct from "improperty", is not (always) compatible with the administration of justice. Justice, as the preservation of existing rights, is not (always) compatible with property in the ideal sense. In CHAPTER 1, I have shown that Locke's myth of appropriation fuses "property" and "justice" together.

In this chapter, I have removed his myth. With the removal of the mythical bond between "property" and "justice", Locke's classical liberalism disintegrates. It disintegrates into the a priori liberalism which defends the ideal "property" of every men, and the conservative, classical liberalism which defends "justice", i.e., the legal protection of men's current rights and possessions. Anyone who wants to eliminate the myth of appropriation from Locke must choose between ideal property and conservative justice.

#### NOTES to CHAPTER 4

1. Beyond Good and Evil, trans. Walter Kaufmann (New York: Vintage Books, 1966), sect. 19, p. 25. Nietzsche's remark is about Schopenhauer's account of the will, rather than Locke's account of appropriation.
2. H. Laski, The Rise of European Liberalism (1936; rpt. London: Unwin Books, 1971), p. 77.
3. See Richard Schlatter's account of the Lockean defence of property in the 20th century. He concludes his historical survey as follows:

Today the natural right theory of property, restated to fit a complex system of co-operative production, is the officially-recognized rule for the distribution of wealth in those parts of the world where socialism has prevailed. In other lands, where that theory was originally developed, and where capitalist economic institutions predominate, the natural right theory lingers on as a popular tradition, but has been rejected by the more thoughtful defenders of the existing system. ... Nevertheless, men are still fascinated by the theory that just ownership is based on labour. The natural right of property is not yet a dead idea .... (R. Schlatter, Private Property: The History of an Idea (1951; rpt. New York: Russell & Russell, 1973), p. 281).

4. In his philosophical, reconstructive discussion of Locke's "Labor Theory of Property Acquisition", Lawrence Becker makes the following remark: "there is scant evidence, outside of Locke, of any serious thinking about how it is that labour can entitle anyone to anything" (Property Rights: Philosophic Foundations (London: Routledge & Kegan Paul, 1977), p. 32). Becker speaks of "any serious thinking" because he mistakenly treats Locke's account of appropriation as a set of justificatory arguments for why labour is the ground of property rights. Nevertheless, this remark is significant. What it really shows is that Locke possessed a rare ability to articulate the modern belief about the connection between labour and property. Becker's philosophical prejudice — his analytical prejudice — prevents him from seeing this simple point. Elsewhere, however, he says that we have "the stubborn desire ... to make the labor theory work" (*ibid.*, p. 54). Thus in the end, he confesses that the connection between labour and property has more to do with our — or at least, his — pre-argumentative appetite.
5. Karl Marx, Capital, vol. 1, trans. Moore and Aveling, ed. Engels (New York: International Publishers, 1967), Ch. XXVI, p. 716.
6. Ibid., p. 714.

7. Alasdair MacIntyre is an exception among English-speaking philosophers. He clearly sees that any Lockean attempt to write a quasi-history of appropriation serves to conceal the real violence and injustice that took place. See his critical discussion of Nozick in After Virtue (Notre Dame, Indiana: University of Notre Dame Press, 1981), p. 234.
8. For an account of enclosures and the concomitant protests, see R. H. Tawney, Religion and the Rise of Capitalism (Harmondsworth: Penguin Books, 1938), pp. 142-50 and pp. 253-8.
9. What I say in this paragraph is a summary of what Marx says at the beginning of Capital, Vol. 1, Chap. XXVII, "Expropriation of the Agricultural Population from the Land". All quotations including quotations from Thomas More and Francis Bacon are taken from Marx. See Capital (New York: International Publishers, 1967), pp. 717-21 and notes.
10. What I say in this paragraph is a summary of what Marx says at the beginning of Capital, Vol. 1, Chap. XXVIII, "Bloody Legislation against the Expropriated, from the End of the 15th Century. Forcing Down of Wages by Acts of Parliament". Quoted phrases and sentences are Marx's. See ibid., pp. 734-7.
11. In this paragraph, I make use of Tawney's account of the enclosures and pauperism. Quoted phrases and sentences are his, and they are found in Tawney, op. cit., pp. 254, 256f. and 263. Needless to say, the reference to "the pro-privatization propagantists of the 1980's" cannot be found in Tawney's book.
12. Robert Nozick, Anarchy, State, and Utopia (New York: Basic Books, 1974), pp. 152f.
13. Ibid., p. 152.

Appendix 1\*

A Critique of Laslett's Treatment of the Two Treatises

\* An improved version of this appendix is to appear in The Locke Newsletter, ed. Roland Hall, No. 16 (1985).

## Appendix 1

### A Critique of Laslett's Treatment of the Two Treatises\*

In this Appendix, I shall criticize Laslett's view that the Two Treatises is a single discourse on government which Locke wrote in response to the Exclusion Crisis and with the primary objective of refuting Filmer's doctrine of absolute monarchy. Laslett presents and defends this view in his long Introduction to the Two Treatises. I criticize it for two reasons. First, this view has been influential among recent Locke scholars; hence, it deserves careful consideration.<sup>1</sup> Secondly, a criticism of this influential view is required for a full defence of my own view of the status of the Second Treatise. Laslett treats the Second Treatise as a work against Filmer, and consequently fails to grant any independent subject-matter or any independent value to it. I hold that the Second Treatise is primarily a general treatise on politics, and its subject-matter(s) should be understood independently of Locke's relationship to Filmer. In order to support this view, it is necessary to reject the view which Laslett has advanced in his Introduction.

Although I am going to be sharply critical, I should acknowledge my indebtedness to Peter Laslett at the outset. In the following discussion, I shall use the historical information Laslett has provided; and I owe a part of my understanding of Locke to the valuable information which he has provided. Though we do not know exactly when the First Treatise and the Second Treatise were

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\*Two Treatises of Government, ed. P. Laslett (2nd ed., 1967; rpt. London: C. U. P., 1970).

composed, I take Laslett's reconstruction of the chronology of the composition of the Two Treatises as valid for the purpose of the following discussion. I shall not criticize his careful reconstruction of the chronology. Instead, I shall use it to show that Laslett follows a fallacious reasoning when he comes to put forward his own views.

Let us first see what Laslett claims in his Introduction. (Page numbers will be quoted from the 1967 hardbound edition.) There are three points he makes, which concern us. First, the First Treatise and the Second Treatise were originally conceived to form a single discourse on government (p. 49f.). Secondly, "As early as 1679 Locke had begun a work on government, and a work with the immediate object of refuting Filmer" (p. 59). This statement is ambiguous, but I quote this to show that in Laslett's view, Locke's objective of refuting Filmer is very important. Later he goes on to say: "Locke wrote his book as a refutation of Sir Robert Filmer" (p. 67). The word "his book" refers to the Two Treatises conceived as a single discourse on government. As Laslett repeats later on, "We must describe Two Treatises ... as a deliberate and polemically effective refutation of the writings of Sir Robert Filmer" (p. 75). The third point is the following: Locke wrote a substantial portion of the Two Treatises in 1679 and 1680, though he revised it in 1681-3 and then in 1689. And "as a response to political and literary circumstances, ... Two Treatises is an Exclusion Tract, not a Revolution Pamphlet" (p. 61). To combine the three points, Laslett's picture of the Two Treatises emerges. It is a single discourse on government; its primary objective is to refute Filmer's doctrine of absolute monarchy; and a substantial portion of it was

written in response to the Exclusion Crisis (or to counter the Tories who had scored "a notable propaganda victory" by republishing Filmer (p. 51)).

There are two questions I should like to discuss. First, is the Two Treatises a single discourse whose primary objective is to refute Filmer's doctrine of absolute monarchy? Secondly, is the Two Treatises a response to the Exclusion Crisis in any significant sense? These questions are distinct from the historical questions concerning the genesis of the book. They concern the text and what is written in it. But it is not unfair to put these questions to Laslett. He unfortunately conflates the question about the genesis of the book with the question about its contents. This conflation is the basis of his editorial comments and his characterization of what the book is about. This is why Laslett's views have been so influential on Locke scholars. I shall start with the second question.

Even if a large portion of the book was composed at the time when the Exclusion Crisis was a big political issue, and even if Locke had an active part to play in assisting Shaftesbury, it does not follow that the book was produced in response to the Exclusion Crisis. Nor can we say that the book was written for the Exclusion Crisis, or about the Exclusion Crisis. Neither the First Treatise nor the Second Treatise makes mention of the bill to exclude the Duke of York from the throne. Neither of them is a book about the possibility of excluding Catholic Kings from the throne. What we can reasonably conjecture is that Locke's act of refuting Filmer in the First Treatise was occasioned by the growing influence of Filmer's writings in the ideological battlefield between the Whigs and the Tories. It is not improbable that Locke,



like Sidney or Tyrrell, felt it necessary to refute Filmer to serve the cause of the Whigs. But this is a question of Locke's motive for writing the First Treatise, or a question about the circumstance which moved him to refute Filmer's doctrine. It tells very little about what the First Treatise is about, nor do we have sufficient evidence to determine precisely what his motive was. Furthermore, if we turn to the Second Treatise and compare Locke's views on constitutional matters with the programmes of the Whig Exclusionists, we find that Locke and the Exclusionists shared very little in common. As John Dunn pointed out, the Whig Exclusionists did not insist on the principle of "taxation with the consent of the governed", because they thought there existed an effective institutional check on the king's power to appropriate property arbitrarily. And most important of all, Locke exempted the "federative power" from the legislative control, whereas the Whig Exclusionists were most anxious to control the Royal conduct of foreign policy.<sup>2</sup>

Laslett's use of the label "the Exclusion Tract" was originally intended to indicate the time when a large portion of the Two Treatises was written. He established beyond any reasonable doubt that the book was mostly written before the Glorious Revolution. He also established that a large portion of the book was written probably at the time of the Exclusion Crisis. Taking these two claims to be valid, I shall discard the label "the Exclusion Tract" as false and useless. It is false because it establishes the non-existing link between the central issues of the Exclusion Crisis and the main claims Locke advances in the Two Treatises. To put it in Humean terms, the temporal contiguity of two events - the writing

of Two Treatises and the Exclusion Crisis - deceives us into believing that there is also a conjunction between the arguments which arose almost simultaneously. The label is useless because by ascribing a partisan, Whig motive to Locke, we cease to take seriously what he says in the Two Treatises. Take, for instance, the First Treatise. This is supposed to be the manifestation of Locke's partisan spirit. But can we find, in the text of the First Treatise, any narrow commitment to the small party which was led by Shaftesbury at the end of the 17th century? I think not. On the contrary, the First Treatise shows his commitment to God and His care for every member of the human species. In order to break away from the then powerful tradition of patriarchalism and attack Filmer's doctrine of absolute monarchy, Locke appeals to God, "the sole Lord and Proprietor of the whole World" (FT, 39), and each man's equal membership of the human species ("the whole Species of Man") (FT, 40; 30). And the method he uses in attacking Filmer's doctrine is predominantly an analytical method of exposing inconsistencies, not a partisan method of exposing another man's psychology. Throughout the First Treatise, Locke stays aloof from Filmer's method of psychological persuasion; and without being troubled by his motives or the influence of his writings, he frequently exposes Filmer's "doubtful Expressions" (Preface), his habit of "hudling several Suppositions together" or making "such a medly and confusion" (FT, 20). Like an analytic philosopher of the present century, Locke wields his intellectual weapon to distinguish "the several Senses wherein his [i.e. Filmer's] words may be taken" (FT, 20), and shows that Filmer's doctrine is either senseless or inconsistent. These prominent features of the First Treatise

receive no attention if we dissolve the text vaguely into the Exclusion Crisis, and reduce Locke's thought to a motive which we, rightly or wrongly, ascribe to him on some scanty circumstantial evidence. At any rate, whatever motive Locke may have had in writing the First Treatise, the ascription of one motive or another to him does not help us understand the highly independent thought he expresses in it.<sup>3</sup>

We now come to the first question: Is the Two Treatises a single discourse whose primary objective is to refute Filmer's doctrine of absolute monarchy? The answer is, simply, no. Laslett correctly points out that Locke presents his Two Treatises as "the Beginning and End of a Discourse concerning Government", indicating that they are two parts of a single continuous discourse with the middle part lost or discarded (Preface). From this, however, Laslett draws a false conclusion that this discourse has the primary objective of refuting Filmer. Yet it is clear that this discourse, which consists of the two parts, has two objectives. As the title-page of the Two Treatises says: in the First Treatise, "The False Principles and Foundation of Sir Robert Filmer, and his Followers, are Detected and Overthrown". But the Second Treatise is "an ESSAY concerning the True Original, Extent, and End of Civil-Government". Given these two descriptive titles, it is natural for us to conclude that Locke has two distinct objectives. First, a refutation of Filmer's doctrine of absolute monarchy; secondly, a presentation of his own theory about the origin, extent, and end of civil government. This natural interpretation can be defended. And only by defending this, can we hope to recover the independent value of the Second Treatise. To do so, we must first examine Laslett's reasons against this natural interpretation.

Laslett has two main reasons to think that the Two Treatises, taken as a continuous discourse, is directed against Filmer. First, there is a technical reason. The "exact and subtle methods of analytical bibliography" have shown that the title-page of the second book was "a later insertion, made in the course of printing", and the title to the whole Two Treatises (which I quoted above) was printed even later and "presumably brought into line with it". Therefore, the word "Treatise", the expression "Two Treatises", the title "An Essay on Civil Government" applied to the second book were "all afterthoughts". (p. 50). What Laslett has done by the subtle technique of analytical bibliography is to dismiss the title like "An Essay concerning the True Original, Extent, and End of Civil-Government" as an afterthought, hence, insignificant. Having removed the significance of the title-pages and created the image of the Two Treatises as one book, Laslett takes the view that Locke's objective of writing one book was to refute Filmer. This view could be easily justified if "one book" in question were the First Treatise. But what is the justification for the view that the Second Treatise also has a refutation of Filmer as its primary objective? Laslett points out that Locke comments on Filmer in his early notebook (p. 58). Then he adds (in the note to sect. 22, ST) that the Second Treatise mentions Filmer's name in three places and his work in one place. Given these references, he says, we can see that "this work [i.e., the Second Treatise], as well as the First Treatise, was written with the object of refuting Filmer, in particular against his tracts [rather than Patriarcha which was not published until 1680]" (Laslett's note to ST, 22). It is worth noting here that Laslett says that the Second Treatise was particularly

directed against Filmer's tracts. His own historical investigation has established that the Second Treatise was written in the winter of 1679-80, "partially" or "as a complete work". And the First Treatise was quickly written after this, when Filmer's Patriarcha appeared (Introduction, p. 65 and p. 59). This is why Laslett tries to be consistent and says that the Second Treatise was directed against Filmer's tracts rather than against his Patriarcha.

Thus his application of the methods of analytical bibliography leads Laslett to dismiss the separate title of the Second Treatise, and Locke's references to Filmer in his early notebook and the Second Treatise make the work's objective a refutation of Filmer's tracts. It is surprising to find that Laslett refuses to see the Second Treatise as Locke's positive contribution to political theory. It seems that in Laslett's view, the work of a political theorist is almost exclusively a polemical one, the work which tries to refute another work. And this approach to political theory is reinforced by Laslett's attempt to destroy what he calls one of the three "dogmas" of Lockean interpretation, namely, the view that Locke tried to refute Hobbes.<sup>4</sup> However, it is a misguided attempt to decide whether Locke tried to refute Hobbes or Filmer in the Second Treatise. The fact of the matter is simple. Both figures are always in the background, but the Second Treatise is Locke's positive contribution to political theory. It is not directed against any particular theorist; rather, insofar as it criticizes anything, it criticizes the general view that political power can be exercised arbitrarily and without a limit.

Having said this, let us see distinctly where Laslett goes wrong. We cannot dismiss the separate title of the Second Treatise

as an insignificant afterthought. Even if the methods of analytical bibliography had worked perfectly, they could only show when the title — "An ESSAY concerning ... Civil-Government" — was printed. But no matter when it was printed, we have ample evidence to believe that Locke's thought about the "origin", "extent", and "end" of civil government was not an accidental afterthought. In the table of contents and in the text, Locke uses the following expressions. First, he uses the word "original" in section 4 of the Second Treatise: "To understand Political Power right, and derive it from its Original, we must consider what State all Men are naturally in". Secondly, the words "beginning", "end", and "extent" appear in the titles of Ch. VIII, Ch. IX, and Ch. XI respectively: "Of the Beginning of Political Societies", "Of the Ends of Political Society and Government", and "Of the Extent of the Legislative Power". (Emphases are added.) And these words appear not only in the titles of the chapters but in the main body of the text (e.g., 99 ff; 124; and 131, 135, 142 for "extent" or "bounds"). Furthermore, the concept of the "extent" of power is Locke's life-long concern, whether he discussed the power of the state, or the power of the church or the power of the mind.<sup>5</sup>

It might be thought that it is of little consequence to dismiss, or forget, the title of the Second Treatise as long as we read the text carefully. But since the way we read a text is determined by our prior rudimentary understanding of what the text is about, our reading of the Second Treatise is likely to go astray once we remove what is written on the title-page, i.e., an essay concerning the true original, extent, and end of civil government. Furthermore, once the title is removed, Locke's reference to the

Two Treatises as "a Discourse on Government" is likely to mislead us into believing that the Second Treatise, like the First Treatise, is primarily a work which refutes Filmer's doctrine of absolute monarchy. On the other hand, however, once we restore the title of the Second Treatise, and if we have the additional information that Locke wrote the Second Treatise before the First Treatise, we can properly regard the former work as his own work on civil government rather than a work which specifically refutes Filmer's tracts. It is true, as Laslett has pointed out, that Locke did make a short comment on Filmer in his notebook at the time of writing the Second Treatise. And there are a few explicit references to Filmer in the Second Treatise. So we are justified in thinking that Filmer's tracts stimulated Locke's thinking when he was writing the Second Treatise. But Locke briefly states Filmer's views (on liberty, for instance), not to dissect and refute them but to contrast them with his own views, namely, the views he takes to be true (ST, 22, 57, 61). Neither his references to Filmer in the Second Treatise nor the short entry in his notebook justifies the claim that the Second Treatise is primarily a work against Filmer.

We are now in a position to correct Laslett's mistreatment of the Two Treatises. As I have argued, it is false and useless to describe the book as "an Exclusion Tract". And though Locke called the book "a Discourse concerning Government", its first part is his sentence-by-sentence refutation of Filmer's doctrine, whereas its second part — written earlier — contains his positive political theory. In treating the Second Treatise primarily as a polemical work directed against Filmer, Laslett misses a distinctive feature of the book (or the second part of the larger book). The

distinctive feature of the Second Treatise is that it deals with a general branch of politics which Locke himself distinguishes from a particular branch of politics, or "the art of governing men in society". In Some Thoughts concerning Reading and Study for a Gentleman, Locke draws a distinction between the two branches of politics, and states that his Two Treatises deals with the general branch. The general branch, he says, concerns "the original of societies, and the rise and extent of political power" (Works, III, p. 296). Locke's phraseology clearly indicates that he has the Second Treatise in mind in this context. (Also, since he uses the particular phrase — "the original ... the rise and extent of political power" — to describe the subject-matter of the general branch of politics, it shows how wrong it is to dismiss the title of the Second Treatise as insignificant.) The general branch of politics makes use of general norms and facts about mankind which go beyond any particular country, or any particular government that exists. And the primary objective of this general study of politics is not a refutation of the work of this or that theorist. As Locke explicitly states in his letter to Richard King, the general branch of politics is "the foundation" for anyone who wishes to have an insight into the constitution of a particular government, and the real interest of his country. If we wish to "proceed orderly" in acquiring an insight into the latter, we should take this "foundation" course first (Works, X, p. 507). In Locke's stated opinion, Pufendorf's De Jure Naturae et Gentium is "the best book" for this foundation course (Works, III, p. 296). And though Locke's Second Treatise is much less encyclopedic, or scholastic, than Pufendorf's book, both books treat the relationships of man, society and political power in a highly general manner.



Laslett's attempt to dissolve the Second Treatise into the supposed objective of refuting Filmer suffers from another defect. He leaves us with a text which does not address any distinct problem. Locke's Second Treatise, though it covers many topics, is organized around two central topics: "property" and the limits of political power. His theory of the state is, first and foremost, a theory of the limits of political power. I do not intend to defend or develop this interpretation of the Second Treatise here, because to do so would require a reproduction of the interpretation I offer in CHAP.1 of this dissertation. But let me simply make two points here. The word "extent" which appears in the title of the Second Treatise is of central importance, because the core of Locke's theory of the state is that anyone who holds political power ought to exercise it within definite "bounds", and cannot extend it further. And for this reason, Ch. XI "Of the Extent of the Legislative Power" is central to Locke's political theory. Secondly, Laslett, who is more concerned about Locke's relationship to Filmer than Locke's own problem, fails to grasp the significance of this chapter. Instead, he makes the curious comment: Chapter XI is "far less clearly connected with the polemic against Filmer than other parts of the text", and "it is probably best regarded as part of the first form of the text, before 1681" (note to 134, ST). It is doubtful whether any other part of the Second Treatise is clearly connected with Locke's polemic against Filmer. But if Ch. XI is not connected with it, we should say that the core of Locke's political theory exists independently of his polemic against Filmer, and it is probably a part of the

composition which precedes his attempt to write a sentence-by-sentence refutation of Filmer, i.e., the First Treatise.

Since the purpose of this Appendix is a negative one of showing that Laslett is wrong, I should like to make another critical remark on his editorial policy. Laslett treats the whole of the Two Treatises primarily as a refutation of Filmer. So he adds various footnotes to a number of passages of the Second Treatise and hints that Locke "had Filmer in mind". And if we go through his extensive footnotes, we often come across the name "Filmer" and the constant appearance of the name makes us feel that Locke wrote the Second Treatise to refute Filmer. But this feeling, I suggest, must be corrected by our sound, impartial judgement. We do not have any good evidence to think that Locke "intended" to refute Filmer in the Second Treatise. On the contrary, if he had so intended, it is a great mystery why Locke did not explicitly state his intention. Laslett's footnotes provide clues to the various works Locke read, so we might profitably compare Locke's views with other theorists' on various issues. But our comparison should not precipitously lead us to think that Locke's Second Treatise is primarily a polemical work. It is plainly not a polemical work directed against one or two particular theorists. His chapter V "Of Property" has been treated by Laslett and other scholars as if it were Locke's polemic against Filmer and other theorists. To treat Ch. V in this way is to misunderstand the project of the Second Treatise. It is a positive project of providing a liberal (or constitutional) theory of the state, and his account of pre-political appropriation is a device for this theory of the state. Locke aspired to be an independent thinker, and refused to be

influenced by another man's ideas. And his Ch. V is not "a direct refutation" of Filmer's works, as Laslett claims. When Locke boasted of his account of property in his letter to Richard King (25 Aug. 1703), he clearly indicated the connection between "property" and constitutionalism by stating that "property" is "the subject-matter about which laws are made" (Works, X, 308).

Laslett attempted to establish a link between the First Treatise and the Second Treatise by positing Locke's objective of refuting Filmer. I have argued that this distorts the primary feature of the Second Treatise, i.e., a general treatise on the limits of political power which Locke wrote before the First Treatise. Laslett reports that Locke seems to have been pleased with, and seems to have authenticated, the French edition of 1691 (Du Gouvernement Civil) which entirely omits the First Treatise (p. 13). Locke's book without the First Treatise is the book which was exported to American colonies; and it is also the book which shaped such European minds as Montesquieu, Voltaire and Rousseau. And Laslett is puzzled as to why Locke did not adopt this world-historical form for subsequent English editions. We might solve his puzzle by dropping his untenable assumption about Locke's relationship to Filmer, and replacing it by a more plausible view. It is likely that Locke regarded the First Treatise as a polemical book against the doctrine of an Englishman which should be read by English readers; whereas he saw the Second Treatise, a general treatise on politics, as possessing a more permanent and less parochial value. Though this is conjecture, it is far more reasonable than assuming that Locke almost always "had Filmer in mind".

1. Few scholars have taken seriously Laslett's provocative remark that the Two Treatises is "an Exclusion Tract". However, his view that the whole of the Two Treatises is a polemic against Filmer has been highly influential, especially among historically-minded scholars such as John Dunn, James Tully, and Gordon Schochet. These historically-minded scholars have never asked seriously why the Second Treatise (or even the First Treatise) should be read from the side of Locke's opponent(s). They uncritically accept Laslett's judgement that the Two Treatises is directed against Filmer, so in criticizing Laslett's view in this Appendix, I am at the same time criticizing their uncritical acceptance of his view about the relationship between Locke and Filmer.

The beneficial result of Laslett's influence is a rise of genuine interest in the history of political thought, as it is exhibited in Schochet's Patriarchalism in Political Thought (New York: Basic Books, 1975). Yet where his influence originated — Cambridge, England — it has become somewhat perverse and produced two illegitimate children: Dunn's dubious historical account of Locke's political philosophy, and Tully's still more dubious historical account of Locke's theory of property. Their historical revisionism is fully criticized in CHAP. 2 of this dissertation. Also, see my critical remarks in CHAP. 1, note 11, and in CHAP. 2, note 7.

2. See John Dunn, The Political Thought of John Locke: An Historical Account of the Argument of the "Two Treatises of Government" (Cambridge: C.U.P., 1969), Chapter 5, especially pp. 51ff. Although Dunn points out the existence of the vast gaps between Locke and the Whig Exclusionists, he fails to draw the conclusion that the Two Treatises is not an Exclusion tract. Under the spell of Laslett's provocative label "an Exclusion tract", Dunn says that "if the text of the Two Treatises as we have it now is exclusively or even predominantly an Exclusion tract, it is often a notably ham-fisted one" (p. 53). However, the antecedent of this sentence is false.

A political historian's judgement cannot be always trusted in this matter. For instance, O.W. Furley claims that the views Locke expresses in the Two Treatises are very similar to those of the Whig Exclusionists. However, we are disappointed to learn that this historian bases his claim solely on the authority of Peter Laslett. See his article, "The Whig Exclusionists: Pamphlet Literature in the Exclusion Campaign, 1679-81", Cambridge Historical Journal, XIII, 1 (1957).

3. A careful reader of the First Treatise must detect Locke's independence and aloofness in his critique of Filmer. He is not at all troubled by the sceptical comments Filmer made on defenders of natural freedom in his tracts and Patriarcha. He refuses to be drawn into controversy with Filmer; he refuses to meet him on his own ground. From the beginning to the end, Locke treats Filmer's doctrine as senseless or incoherent, i.e., as unworthy of sympathetic hearing.

Laslett notes that as a reply to Filmer, Locke's First Treatise is less fair and less complete than Tyrrell's Patriarcha non Monarcha. (Laslett's Introduction, pp. 58f). Laslett also speaks of Locke's failure to recognize the full strength of the patriarchal tradition, in contrast with Tyrrell's admission of the effectiveness of Filmer's criticism. However, Laslett does not note that Locke's aloofness and his refusal to answer unworthy opponents were attributes of his independence, whereas Tyrrell's sensitivity to controversy was a sign of his inability to develop any independent thought. If we read the letters exchanged between Locke and Tyrrell, we find that Tyrrell was anxious about refuting someone else's views whereas Locke was not bogged down in the controversy of the day. For instance, when Tyrrell urged Locke to publish his essays on the law of nature, his reason was not only that Locke would do a better job than himself or Cumberland. Tyrrell also thought that he would be able "to confute with better Reasons the Epicurean Principles of Mr: Hobs [sic]" (Tyrrell's letter to Locke, 9 August 1692, Correspondence, vol. iv, p. 495; cf. his letter to Locke, 27 July 1690, Ibid., p. 109). Locke did not respond to Tyrrell. Though this is usually interpreted to mean that he was aware of the inadequacy of his own account of the law of nature, it is more plausible that he was not interested in a controversy for its own sake. He had problems of his own to think about, and when his critics challenged him he bravely met the challenge.

As far as Locke's relationship to Filmer is concerned, he did not take Filmer to be a serious challenge. He clearly saw the propagandist use of Filmer's writings and wrote the First Treatise to show the intellectual bankruptcy of Filmer and his followers. Furthermore, though Laslett lumps together Locke, Tyrrell and Sidney as the Whig propagandists, it is noteworthy that Locke did not even read Sidney's Discourses concerning Government. (For this, see his own remark on Sidney's book in "Some Thoughts concerning Reading and Study for a Gentleman", Works, III, p. 296.)

Locke pursued a philosopher's policy far more than Laslett realizes. It is the policy of independent thinking in search of truth. Locke joined a controversy and became polemical only when he thought that truth was at

stake, and his ideal was to commit himself to disinterested search for truth rather to get vain satisfaction by beating his opponents. Laslett and other historically-minded scholars simply miss this traditionally philosophical attitude of Locke; consequently, their interpretation becomes quite unhistorical. Locke did not want to be involved with a controversy which would merely cause disorder and contention. As he wrote to Limborch (29 Oct. 1697): "mais j'aime la paix, & il y a des gens dans le monde, qui aiment si fort les criailleries & les vaines contestations, que je doute si je dois leur fournir de nouveaux sujets de dispute" (Works, IX, 63). This attitude to seek peace and avoid unnecessary contentions has a counterpart in Locke's account of the origin of property. Contentious and quarrelsome people disturb peace by trying to take the property which others have acquired by their honest labour (ST, 34, 31). Justice is at stake in property disputes; truth in theoretical disputes. About the relationship between truth and controversy, Locke wrote the following:

Truth ... I always shall be fond of, and so ready to embrace, and with so much joy, that I shall own it to the world, and thank him that does me the favour. So that I am never afraid of any thing writ against me, unless it be the wasting of my time, when it is not writ closely in the pursuit of truth, and truth only (Works, VIII, 417; Locke's letter to Molyneux, 3 May 1697).

'tis Truth alone I seek, and that will always be welcome to me, when or from whencesoever it comes (Essay, "The Epistle to the Reader", Nidditch ed., p. 11).

It is search after truth that counts, and controversy is justifiable only if it is guided by the ideal of seeking truth, not by partisan spirits and dogmas. Finally, we must note that Locke explicitly stated his anti-propagandist position and his ideal of search after truth and justice in the Preface to the Two Treatises:

I should not have Writ against Sir Robert, or taken the pains to shew his mistakes, Inconsistencies, and want of ... Scripture-proofs, were there not Men amongst us, who, by crying up his Books, and espousing his Doctrine, save me from the Reproach of Writing against a dead Adversary. They have been so zealous in this Point, that if I have done him any wrong; I cannot hope they should spare me. I wish, where they have done

the Truth and the Publick wrong, they would be as ready to Redress it and allow its just Weight to this Reflection, viz. That, there cannot be done a greater Mischief to Prince and People, than the Propagating wrong Notions concerning Government .... If any one, concerned really for Truth, undertake the Confutation of my Hypothesis, I promise him either to recant my mistake, upon fair Conviction; or to answer his Difficulties (Laslett's ed., p. 156).

Locke wrote the First Treatise to expose and correct Filmer's false views, and show that his followers are merely empty-headed enthusiasts. Though it is a refutation, it is not so much a polemic against Filmer as an exposition and correction of his false views. It is not a contentious book though it criticizes Filmer; it rather shows Locke's commitment to truth, or what he believed to be true.

4. Laslett attacks the old dogma that Locke tried to refute Hobbes, and in so doing he replaces it by a new dogma that Locke tried to refute Filmer in the Second Treatise as well as in the First Treatise. See Laslett's involved discussion in his Introduction, pp. 67ff.
  
5. The concept of limits (or "bounds" or "extent") is central to Locke's thought as a whole. Without this concept it is impossible to understand the unity of his philosophical corpus. In Appendix 2, Sect. III, I have given a detailed account of Locke's preoccupation with the extent, or bounds, of power. In one segment of Sect. III of Appendix 2 (headed "(i) A Recovery of Parallelism"), I have also given an exhaustive account of why the separate title of the Second Treatise is important.

## Appendix 2\*

Locke's Political Theory and its Epistemological  
Foundations: A Systematically Misguided Project

\* This is not really an "appendix". Rather, it is a self-contained work. It combines scholarship, philosophy, and pleasure. I hope the reader will enjoy this carefully constructed work. Its length and the academic language might prevent him (or her) from enjoying it. To remove this obstacle, I have provided the slogans which express the spirit of this work, and offered a picturesque table of contents. I recommend the reader to relish the slogans, and look for certain interesting images and parallels in the table of contents.

I have sent this unusual appendix to a learned Locke scholar as a present. He has commented: the "content" is "very interesting". In the near future, I shall shorten this piece, make it more attractive and enjoyable, and publish it.



## SLOGANS

- (1) "Hitherto men have constantly made up for themselves false conceptions about themselves, about what they are and what they ought to be. They have arranged their relationships according to their ideas of God, or normal man, etc. The phantoms of their brains have got out of their hands. They, the creators, have bowed down before their creations. Let us liberate them from the chimeras, the ideas, dogmas, imaginary beings under the yoke of which they are pining away". (Marx and Engels)
- (2) "[T]he end is not an ungrounded presupposition: it is an ungrounded way of acting". "The difficulty is to realize the groundlessness of our believing". (Wittgenstein)

- (1) From the Preface to the German Ideology.
- (2) From On Certainty, sects. 110 and 166.

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Appendix 2:        Locke's Political Theory and its  
                     Epistemological Foundations:  
                     A Systematically Misguided Project

I.    Introduction

Some may wonder whether neo-Kantianism really has such a strong hold on the minds of philosophers and scholars who specialize in Locke. But the fact remains that there are quite a few philosophers and scholars who are strongly tempted to discuss "epistemological foundations". Three commentators on Locke have recently tried to carry out the project of searching for the epistemological foundations of Locke's theory of property. Their project is of philosophical interest, for it purports to elucidate what goes on within his political theory while at the same time it tries to link it to his epistemology. Upon careful consideration, however, I have reached the conclusion that their project is systematically misguided, and the claims advanced within this project are entirely unfounded. Furthermore, the project breeds, and is bred by, an illusory view of the relationship of the Two Treatises to the Essay. So I shall relentlessly criticize this project. My immediate purpose is destructive, but the ultimate purpose of my destructive arguments is to liberate us from illusion.

The three commentators I discuss are Max Milam, John Yolton, and James Tully. The writings which are relevant to my discussion are the following: Milam's article, "The Epistemological Basis of Locke's Idea of Property"; a chapter of Yolton's book, "Property: A Mixed-Mode Analysis"; and a chapter of Tully's book, "The contribution of the Essay", which deals with the "Philosophical Underpinnings" of Locke's theory of property.<sup>1</sup> Though their specific claims differ, they try to

carry out the same project. Their project is to discover in the Essay the epistemological foundations of Locke's theory of property; or to reconstruct the epistemological foundations of his theory of property out of the doctrines of the Essay.

The phrase "Locke's theory of property", which I have used to describe their project, should be understood in a flexible sense. Though Milam is almost exclusively concerned about the account of appropriation Locke offers in Chapter 5 of the Second Treatise, Yolton and Tully deal with larger segments of the Two Treatises where Locke advances claims about property. So "Locke's theory of property" means either a set of claims Locke makes about property in Chapter 5 of the Second Treatise, or those claims he makes about property in that chapter and elsewhere in the Two Treatises. This expands the meaning of "Locke's theory of property" indefinitely. Given Locke's statement that men's "Lives, Liberties and Estates, ... I call by the general Name, Property" (ST, 123), his "theory of property" can become equivalent to his political theory which consists of claims about men's lives, liberties and possessions. This shows that the project in question is an attempt to link Locke's epistemology with his political theory as much as an attempt to link it with his account of appropriation.

The foundations which the three commentators try to discover or reconstruct are called "epistemological" in the broad sense that they concern our ideas and knowledge. Yolton, who links Locke's doctrine of "mixed modes" with his account of property, speaks about the meaning of mixed-mode words (or concepts). Thus he brings in a semantic doctrine as well as the doctrine concerning our ideas. But since "a mixed mode" for Locke is a particular kind of "Complex Ideas" (Essay, II, xxii, 1), Yolton can be said to link Locke's "epistemological"

doctrine — his doctrine concerning ideas — with his account of appropriation and political theory.

Since I have offered preliminary terminological clarification, I now state how I intend to undertake the task of destruction. It is a two-fold task. First, I shall examine the arguments presented by Milam, Yolton and Tully very carefully, and demonstrate that their arguments are not valid. This task requires great care, since they do not simply make one false claim but a series of false claims which hang together in a very oblique way. On superficial reading, their writings may even appear to contain plausible accounts of the relationship between Locke's theory of property and his epistemological doctrines. But this is because they are systematically confused over many problems including the problem of understanding their own project. Their systematic confusion makes their writings impenetrable. To penetrate, I shall try to detect a distortion in their perspective. To detect this distortion is the second aspect of my destructive task. This can be done by pointing out the ambiguity in the way each commentator states his task, or by pointing out the illusion which the distorted perspective creates. As we shall see later, what is non-existent in Locke's writings appears to Milam, Yolton and Tully as existing. What is real to them is fictitious to Locke. To Milam and Yolton, Locke's account of appropriation even appears as an account of the idea of property instead of an account of property.

The illusion of this sort is the philosophical illness to which many men are vulnerable. To use a Marxian image: real objects appear in a mystified, inverted form in the minds of alienated men, so that they hold on to ideological illusion and illusory happiness. Or to use

a more appropriate Wittgensteinian metaphor: Milam, Yolton, and Tully become "captives" of a particular "picture" of Locke's philosophical corpus. Having become captives, they struggle to fly out of their "fly-bottle" by trying to connect Locke's epistemological doctrines with his political theory, something that lies outside the boundaries of his theory of ideas and knowledge.<sup>2</sup>

The picture which captivates the minds of Milam, Tully and Yolton is the "foundationalist" picture of philosophy. This is the picture of philosophy to which they have become well-accustomed as a result of their profession. They approach Locke's philosophical corpus by making use of this picture. According to this picture, philosophy is predominantly an epistemological or methodological discipline where a philosopher works out basic principles and doctrines. Secondly, these basic principles and doctrines are those which can be applied to another discipline such as political theory. Thirdly, those principles and doctrines "support" another discipline such as political theory. They may support it, by providing a legitimate method of inquiry, or by demarcating a legitimate domain of discourse for another discipline, or by justifying the premises from which a philosopher can argue (deductively or otherwise) to defend the claims he makes in another discipline.

This is the picture of philosophy which is shared by many philosophers today. Yet this is not a picture Locke had of his philosophical corpus which includes the Essay and the Two Treatises. Anyone who approaches Locke's works by ascribing this picture to him is likely to suffer from systematic confusion. Milam and Tully unambiguously hold the "foundationalist" picture of philosophy and apply it to

Locke's works. This is clear from their talk about "the epistemological basis" (Milam) and "the philosophical underpinnings" (Tully). Yolton is free from the foundational metaphor, and he himself holds the picture of philosophy as a "conceptual" inquiry. As we shall see later, he even asserts at one point that Locke is not a systematic philosopher who applies his epistemological or methodological principles to another discipline. Yet close examination shows that Yolton retains the "foundationalist" picture, though with some ambivalence. This is why he tries to show, by way of reconstruction, that Locke's theory of property in the Two Treatises can be treated as an application of his epistemological (and semantic) doctrine about "mixed modes".

The foundationalist picture of philosophy misleads Milam, Yolton and Tully, and causes systematic confusion in their thought about Locke's theory of property and the Two Treatises. I shall rescue his theory of property and his book from their systematic confusion, and liberate them from the "foundationalist" picture of philosophy. Liberation is intended not only for Milam, Yolton and Tully, but all readers of the Two Treatises and the Essay who wish to carry on a discourse on Locke's discourses in a free spirit. In place of the old, "foundationalist" picture of Locke's works, I shall present a new picture. This picture captures how he himself conceived of his works. He would welcome it, after a long neglect of later generations. This new picture, which is in fact as old as Locke, cuts across the two foundationalist camps who fought a futile battle over the existence, or non-existence, of any significant philosophical connection between the Essay and the Two Treatises. Milam, Yolton and Tully are those foundationalists who affirmed the existence of philosophical (i.e., epistemological) links. Their project, which I destroy, is in part

a response to the leading Locke scholar who explicitly denied the existence of any such link by taking the same foundationalist view of philosophy — Peter Laslett.<sup>3</sup> It is possible to show that Laslett suffers from systematic confusion just as much as Milam, Yolton, and Tully. The two camps of Locke commentators were equally attached to the "foundationalist" picture of philosophy, and equally failed to understand how Locke conceived of the relationship of his epistemology to his political theory. The new picture I shall ascribe to Locke is this: his discourse on ideas and knowledge does not provide a legitimate method of inquiry for his discourse on property and government; nor does it demarcate a legitimate domain of discourse for his political theory; nor does it justify the premises of his political theory. What Locke did was to create two independent discourses without any subordination or interference between them. Within the bounds of each discourse, he freely used his intellectual labour to increase his intellectual products (i.e., doctrines about ideas and knowledge on the one hand, and doctrines about property and government on the other). But he used a very general, common method of inquiry in developing the two independent discourses. It is a method of setting bounds to the power of an agent (an intelligent agent, or a political agent), and also of setting bounds to various segments of each discourse and thereby making them distinct and separate from each other. In short, the two discourses are horizontally related to each other by a few non-epistemological links. The relation can best be described by Locke's political imagery: the two discourses are "free", "equal" and "independent"; and those who "labour" within the "domain" of one discourse ought not to "meddle with" the intellectual product which



"properly belongs to" the domain of another discourse. I shall provide the details of the picture of sharply-bounded, horizontally-linked, discourses after I have completed my destructive task.

The following discussion is divided into two sections. Section II is devoted to a detailed criticism, and destruction, of the project of searching for the epistemological foundations of Locke's theory of property. Section III is devoted to the task of liberating us from any "foundationalist" approach to his political theory.

## II. A Criticism of the Project; or the Illusion of Epistemology

I shall examine the three commentators' claims as carefully as possible, and try to show how their systematic confusion arises from their own "foundationalist" picture of philosophy. I shall criticize each commentator individually. Larger space is given to Yolton and Tully than Milam. This unequal treatment is due to the fact that while Milam's discussion is obviously fanciful, Yolton seems to support his case by a careful study of Locke's philosophy, and Tully seems to support his case by a solid historical scholarship of the modern tradition of natural law and natural rights. By giving larger space to Yolton and Tully, I shall try to show that the three commentators are equally wrong. Let me begin with Milam.

### (i) Milam's Fanciful Use of the Idea of a Secondary Quality

In his article "The Epistemological Basis of Locke's Idea of Property", Milam defends the following thesis: "to Locke, a person may be said to have 'property' in real estate (and in 'life' and 'liberty')

in the same sense and for the same reason that any natural object may be said to have secondary qualities or 'properties'".<sup>4</sup> Notice that Milam ignores, from the start, the distinction between the meaning of the word "property" and the (justificatory) reason for having property. It is also obvious that his thesis, if taken literally, is impossible to defend. For instance, Locke speaks of "property" as "a private Dominion, exclusive of the rest of Mankind" (ST, 26) in Chapter 5 of the Second Treatise, whereas the "sense" of an exclusive right is absent from Locke's discussion of "secondary qualities". Locke's men also acquire property "for the reason" that they labour, take pains to obtain external goods, and improve the general environment. This "reason" is plainly missing from a natural object's having "properties" or "secondary qualities". Thus from the start, it appears that Milam's thesis is hopelessly indefensible. But let us take a closer look at what he actually claims.

The gist of the argument which purports to support Milam's thesis is the following: Locke sees the relationship of primary qualities, power, and secondary qualities (what he sometimes calls "properties") in a particular way. On Milam's interpretation of Locke's view, when an object A exerts power over another object B, A alters B's primary qualities and causes the ideas of new secondary qualities in our mind. In this case, says Milam, "the active power involved is actually that of the first object".<sup>5</sup> For instance, if fire (A) exerts power over wax (B), it alters the primary qualities of wax and causes the idea of a new colour (i.e., the idea of a new "quality" or "property") in our mind. In this process of change, the power involved is actually that of fire. Milam then applies this

account of how we receive the idea of a new "quality" or "property" to Locke's account of "property" in Chapter 5 of the Second Treatise. He draws on analogy and explains what goes on in Chapter 5 as follows. If a man (A) exerts his labour-power over a piece of land (B), it alters the primary qualities of land and causes the idea of cultivated land in our mind. The idea of cultivated land is the idea of a new "quality" or "property", and in the process effected by human labour, the power involved is actually that of the labourer. Ergo, a man in Locke's view has a property in land "in the same sense and for the same reason" that any natural object has secondary qualities or properties.

In offering this curious account, Milam takes for granted what he intends to prove. The account I have summed up merely presupposes that "a secondary quality" of the Essay is equivalent in meaning to "(a) property" of the Second Treatise. But since this is what he wants to prove, he only argues in a circle. To be charitable, we can say that Milam presents a picture of what Chapter 5 would look like if we applied Locke's account of how we receive the idea of a new secondary quality in the process of change. But this shows, even more clearly, that Milam fails to prove that Locke used his account of the production of the idea of a new secondary quality as "the epistemological basis of Locke's idea of property".

Beside the fallacy of circular reasoning, there are a number of objections we can raise. I shall mention only a few. The fact that Locke sometimes uses the word "properties" as a synonym for "secondary qualities" in the Essay in no way proves that he uses the word "property" in the sense of "a secondary quality" in the Second Treatise.

In Chapter 5, Locke himself suffers from what Hutcheson called "confused imagination" and occasionally thinks of property as if it were a quality.<sup>6</sup> But even Locke's confused imagination, let alone his strict meaning of property as a man's exclusive right of disposal (or its object), does not support the view that "property" of the Second Treatise is "a secondary quality". Another objection is that Locke's account of appropriation in Chapter 5 is not an account of how we receive the idea of property, but "how Men might come to have a property in" definite portions of the God-given world (ST, 25). Milam has offered no reason to believe that Locke would have given a different account of appropriation if he had had a different account of the reception of the idea of a new secondary quality. Plainly, he could have given the same account of appropriation even if he had not had the notion of a secondary quality. Thirdly, the analogy Milam draws between fire exerting its power over wax and a man exerting his labour-power over land breaks down, if we think of whiteness as the property of wax and cultivated land as the property of the labourer rather than the land itself. Finally, Milam offers no account of Locke's understanding of property as a right.

While the fallacy of circularity is a fatal blow to a defence of Milam's thesis, these minor objections tear his account to pieces. His account rests on the groundless belief that there is an epistemological basis of Locke's account of appropriation. But as a result of his systematic confusion, he gives a distorted, ambiguous expression to his own belief. He says: "The Epistemological Basis of Locke's Idea of Property", instead of "The Epistemological Basis of Locke's Account of Property".

## (ii) Yolton's Mixed Feelings about "a Mixed Mode"

Yolton makes another attempt to link Locke's epistemology with his theory of property, in one of the chapters of his book, Locke and the Compass of Human Understanding. The chapter is entitled, "Property: An Example of Mixed-Mode Analysis". In this chapter Yolton argues that Locke is primarily concerned with "conceptual" problems in the Two Treatises. Whether he refutes Filmer's view of property in the First Treatise or he offers his own account of property in Chapter 5 of the Second Treatise, his primary concern is with "conceptual" problems rather than "justificatory" or "empirical" problems. Besides making this point, however, Yolton wishes to claim that Locke's account of property as well as his refutation of Filmer's view is "an example of mixed-mode analysis". "An example of mixed-mode analysis" is the expression which Yolton uses without much explanation. But what he means is that Locke's discourse on property is an example of the analysis of the concept which is classified as "a mixed mode" in the Essay. Moreover, Yolton is committed to the view that Locke is primarily concerned with "conceptual" problems concerning property because he grants a particular epistemological status to the concept of property in the Essay. If this view is defended, then Locke's discourse on property can be said to be supported by his classification of ideas in the Essay; or more specifically, by his epistemological doctrine about "mixed modes".

How does Yolton defend this view? In fact, he does not try to defend it seriously. He makes only a half-hearted attempt at defence. Insofar as he tries to defend it (as he must, given the title "Property: An Example of Mixed-Mode Analysis"), he merely confuses himself. In what follows, I shall try to show that he is deeply confused in trying to connect the Essay and the Two Treatises by Locke's classification of

moral ideas as "mixed modes". Yolton is a leading Locke scholar today, and I respect him for his fine scholarly work, John Locke and the Way of Ideas. Nevertheless, in the chapter of the book which I am about to examine, he falls victim to the loose association of ideas which his intellectual hero, John Locke himself, strongly condemned. I shall point this out clearly and distinctly, without extending my criticism to Yolton's earlier, solid work of scholarship.

As I said above, Yolton makes only a half-hearted attempt to defend the claim that Locke's preoccupation with "conceptual" problems about property arises out of his epistemological doctrine of "mixed modes". His half-heartedness appears as intellectual vagueness in one of his footnotes to "Property: An Example of Mixed-mode Analysis". Yolton says, in the footnote:

I do not mean to suggest that Two Treatises is in any detailed way an application of epistemic and methodological principles established in the Essay. Locke is not a systematic philosopher - his writings do not present a system - in that traditional sense. It is wrong to assume that because he holds to certain doctrines in the Essay, he will conclude thus and so in other works. Nevertheless, one of the features of Locke's work which mark him out as a philosopher ... is his constant interest in clarity and conceptual connexions. This feature of his science of signs, the analysis of mixed-mode concepts, occurs in all his writings.<sup>7</sup>

In this passage, Yolton affirms and denies the existence of epistemological connections between the Two Treatises and the Essay. The Two Treatises is "not" an application of the epistemological doctrines of the Essay in "any detailed way", where the detailed way is taken to mean the deducibility of every conclusion of the Two Treatises from what Locke says in the Essay. Every sensible man would agree with Yolton that the two works are not related in "any detailed way" in this specially strong sense. But at the end of the above passage, Yolton affirms that Locke's "analysis of mixed-mode concepts" "occurs in all his writings". Thus

Locke's epistemological doctrine about "mixed modes" connects — or seems to connect — the two works in a very rough way rather than in any detailed way. But this is too rough a statement to be made by the renowned Locke scholar. Yolton, who takes Locke's "Division of the Sciences" seriously, should have taken his view on the division of the sciences with greater seriousness. Locke states in the very last sentence of the Essay: the sciences which he divides into three parts are "toto coelo different", and "they seemed to me to be the three great Provinces of the intellectual World, wholly separate and distinct one from another" (Essay, IV, xxi, 5). Natural philosophy, ethics, and the doctrine of signs are so distinct and separate from one another that Locke's doctrine of "mixed modes" belongs to only one branch of the intellectual world. It does not bridge the three separate disciplines, nor the two separate writings such as the Essay and the Two Treatises. Yet Yolton fails to see this. Instead, he assumes that Locke's doctrine of "mixed modes" connects the two works, and tries to show — though not in "any detailed way" — the way in which his doctrine connects them.

I now summarize Yolton's rough account of the connecting link. His account is deeply confused, but I shall first offer a summary without making any comment. Some of Yolton's passages will be marked by letters — (a), (b) & (c) — for the sake of a later discussion. What dominates Locke's thought, says Yolton, is "his notion of mixed modes as concepts made arbitrarily by the mind 'without patterns, or reference to any real existence'".<sup>8</sup> In the First Treatise, Locke points out Filmer's misreading of the Bible by a "conceptual" rather than "empirical" method. The reason for this, according to Yolton, is the following:

- (a) since the concepts of right, sovereignty, ruling, property, etc. are mixed modes, the major test of claims made that employ such concepts must be conceptual, not empirical.<sup>9</sup>

Yolton's point is that given the concept of property being "a mixed mode", the major test of the claims which involve the use of the word "property" must be "conceptual". He goes on to explain what "the major test" is. As a result of "the arbitrariness of the meanings of moral words", anyone involved in a dispute over the meanings of moral words must appeal to common meanings, or else moral principles, in order to settle the dispute. This is the only way to settle the dispute in a non-arbitrary way:

- (b) The only basis for making non-arbitrary claims about moral words would be some firm and unalterable rules of right and wrong. Controversy over moral concepts can be settled by agreeing on common meanings or by reference to moral principles. For Locke, the laws of God, nature and reason contained the principles of right and wrong by reference to which controversy over those concepts could be settled.<sup>10</sup>

Yolton, then, cites passages from the First Treatise to show that Locke is involved in "controversy over moral concepts" with Filmer, conceding that Locke does "not always" appeal to common meanings or moral principles to settle the controversy. Finally, Yolton turns to Chapter 5 of the Second Treatise to drive home the point that Locke's predominant concern is with "conceptual" problems concerning property rather than justificatory or empirical problems.

Yolton states:

- (c) He [Locke] was not much concerned in Two Treatises ... to establish the rights he claims. He was rather concerned to point out the conceptual failings of Filmer and, in the case of the concept of property itself, to work out some of the conceptual problems to which that concept gave rise.

...



The main concern ... of the chapter on property in the second Treatise, ... is with explaining how private property of individual men can arise out of the common property of all men. ... The working out of the answer to this problem is largely a conceptual matter for Locke, how particularisation of the common is possible.<sup>11</sup>

This is a fair summary of Yolton's account of the relationship between "mixed modes" and Locke's discourse on property. I have singled out three passages, and marked them as (a), (b) and (c). This is because Yolton commits the error of triple confusion. He suffers from conceptual confusion three times, once in each marked passage. Since his confusion is deep-seated, I shall trace his confusion backward by referring to passage (c) first, and then to (b) and (a).

First of all, if Yolton were to establish a link between Locke's doctrine of "mixed modes" and his account of property in the Second Treatise, he would have to show that Locke's Chapter 5 deals with "conceptual" problems in the sense that it deals with controversy over the meanings of the moral word "property". In Yolton's own view, if a concept is classified as "a mixed mode", this special status requires that we should settle a dispute over the meaning of that concept, or that moral word, in a non-arbitrary way (as Yolton specifies in (b)). However, Locke's account of "how men might come to have a property in several parts of that which God gave to Mankind in common" (ST, 25) is not an attempt to settle the controversial meaning of the word "property". From the beginning of Chapter 5, Locke takes a particular meaning of the word as fixed, and asks how men might come to have a "property" in distinct portions of the God-given world of common things. In passage (c) above, Yolton loosely speaks of the "conceptual" matter. It is a "conceptual" matter in the sense that it requires the exercise of

intellect and some skill in conceptual thinking to write the kind of account which Locke produced, but not in the sense which is required for Yolton's attempt to establish an epistemological link between Chapter 5 and the Essay. Besides, as far as Locke's problem of Chapter 5 is concerned, it is a half-empirical, half-justificatory account of the conversion of the original community of things into the world of property. Locke is not performing a transcendental deduction of the concept of property in the manner of Kant.

The alleged connection between the epistemological status of the concept of property and Chapter 5 is thus non-existent. Next let us turn to passage (b). In this passage, Yolton claims that "controversy over moral concepts can be settled ... by reference to moral principles". This is a bizarre claim, and Locke nowhere advances a claim of this sort. Take the fundamental precept of Locke's law of nature, for instance: "No one ought to harm another in his Life ..."  
(ST , 6). Can we settle the meaning of the moral word "ought" by reference to this principle, this law of God? No, we cannot. We may appeal to this moral principle if we want to settle a dispute about substantive morality, i.e., a dispute about what is substantively moral. We cannot settle our controversy over moral concepts (or the meanings of "moral words", as Yolton puts it), by reference to the very rule that makes use of those moral concepts (or moral words). In short, Yolton conflates two types of controversy in passage (b): controversy over moral words or concepts, and controversy over what is substantively moral.

By this conflation, Yolton abolishes the distinction between how to settle the meanings of moral words and how to settle the conflicting claims couched in moral words. Needless to say, the claims Locke makes

in the Two Treatises contain such words as "rights", "property", and "law". But it is one thing to settle the conflicting claims which are substantively moral, while it is quite another to settle the meanings of the moral words which make up those claims. But again, Yolton conflates these two distinct things. This confusion can be found in his passage (a), where he says that since the concept of property is "a mixed mode", the "major test" of the "claims" which employ moral words "must" be conceptual rather than empirical. If the "claim" in question is a claim about the meaning of a moral word, then the epistemological status of the word as "a mixed mode" may be relevant to the settlement of a dispute over the meaning. But the "claim" Yolton has in mind is not of this kind. He refers to Locke's "controversy" with Filmer; specifically to his attempt to refute the claim that Adam originally had private dominion over God's creation, to the exclusion of the rest of mankind. Filmer's claim is a substantively moral claim, and he rejects this claim by appealing to biblical evidence (FT, 24, 29, 30, 40). In one sense, Locke's appeal to biblical evidence is an "empirical" method rather than a "conceptual" method — in the sense that he quotes relevant passages from the Bible and presents them as the evidence (or the empirical evidence) for his claim.

Yolton is of course correct in pointing out that Locke uses an analytical method of exposing Filmer's obscure meanings and inconsistencies. However, he offers no convincing reason that Locke's use of the analytical method is a consequence of the particular classification of moral words as "mixed modes". Locke certainly is a philosopher who is sensitive to subtle distinctions, but he exhibits his analytic skill in most of his controversies whether they involve moral words or not.

Why did he meticulously examine Filmer's meanings, and try to expose his inconsistencies by the analytical method? The reason has nothing to do with the epistemological status of moral words; it has a great deal to do with the fact that Locke knew of the effectiveness of the analytical method in combating the degenerate, propagandistic method of spreading false doctrines. Locke states in the Preface to the Two Treatises:

I should not have Writ against Sir Robert, or taken the pains to shew his mistakes, Inconsistencies, and want of ... Scripture-proofs, were there not Men amongst us, who, by crying up his Books, and espousing his Doctrines, save me from the Reproach of Writing against a dead Adversary. (Preface, 156).

I have dissected Yolton's account of the connecting link between Locke's doctrine of "mixed modes" and his discourse on property in the Two Treatises. I have shown that it is simply a confused account. If we push Yolton's view to its logical conclusion, the Two Treatises is predominantly a discourse on the concept of property or a discourse on moral and political concepts. His mistake is to treat the book primarily as a work on political concepts, and secondarily as a work on political problems. Yolton himself certainly does not wish to commit this sort of error. Hence, at the very end of his discussion, he qualifies his approach by stating that the Second Treatise, other than its Chapter 5 and early chapters, is "not" "mainly or largely" intended for "conceptual clarification of the civil and moral mixed modes".<sup>12</sup> This is a self-deceptive remark since he holds that the whole of the First Treatise and a very important chapter of the Second Treatise are predominantly the work of "conceptual clarification". He has already treated a significant portion of the Two Treatises as a second-order inquiry into moral or political concepts. In taking this approach to the work, Yolton follows the "customary" treatment of political philosophy

by (some) analytic philosophers of the present century. He also retains the conventional view that epistemology is the foundation of political philosophy. In these respects, he falls victim to the custom which in Locke's view is the chief cause of "the association of ideas" — the psychological mechanism which is just as opposed to "reason" as "madness" is (II, xxiii, 4).

I have been sharply critical of Yolton's attempt to connect Locke's doctrine of "mixed modes" with his theory of property. In fairness, I should like to add two remarks. First, as I already indicated, Yolton is correct in pointing out that the Two Treatises exhibits Locke's sensitivity, or intellectual alertness, to subtle conceptual distinctions. Yolton, I believe, has shown that Locke is more alert to subtle conceptual distinctions in dealing with political problems than is usually thought. What I have criticized is his explanation of why Locke is conceptually or intellectually alert. Secondly, I should like to draw attention to the fact that I did not take seriously the two statements Yolton made to qualify his approach to the Two Treatises. The first qualifying statement appears in his footnote which I quoted at the beginning of my critical discussion. There Yolton denies, though not whole-heartedly, that Locke is a systematic philosopher who applied his epistemological or methodological principles. The second qualifying statement is the one I quoted in the preceding paragraph: namely, the statement that the Second Treatise, with the exception of Ch. 5 and other early chapters, is "not" primarily concerned with conceptual clarification. I did not take these statements seriously, not only because they are additions to the substance of his discussion, but because they only show that Yolton's approach to the Two Treatises is torn apart. Since Yolton is well acquainted

with Locke's corpus, he instinctively feels that it is wrong to treat the Two Treatises as an application of the epistemological doctrine Locke worked out in the Essay; hence, he denies the status of a "systematic" philosopher to Locke. But since Yolton himself retains the "foundationalist" picture of philosophy, he goes on to treat Locke's corpus from the viewpoint of this metaphilosophy. On the other hand, Yolton also makes use of the "conceptualist" picture of philosophy according to which the primary task of philosophy is to clarify conceptual muddles. He applies this picture to Locke as well, but since it conflicts with the Second Treatise which deals with the problem (rather than the concept) of "the true original, extent, and end of civil government", he also needs to qualify his treatment of Locke as the conceptualist. Yolton's approach, thus torn apart, becomes ambiguous. He himself has mixed feelings about what he says about "mixed modes".

(iii) Tully's Historical Revisionism, and the  
 "Philosophical Underpinnings" of  
 Locke's Theory of Property

Though Yolton half-heartedly searched for the epistemological foundations of Locke's theory of property, James Tully obtains a clue from Yolton and wholeheartedly involves himself with the project of searching for the foundations. One chapter of his book, A Discourse on Property, is entitled "The contribution of the Essay". In this chapter, Tully claims that certain portions of the Essay are the "philosophical underpinnings" of Locke's political theory in general, and "his theory of property" (or his account of appropriation) in particular. Tully tries to validate this claim by relying on one historical source, the

writings of Jean Barbeyrac. He also performs an independent reconstructive task to show that certain parts of the Essay are indeed supportive of Locke's political theory. I shall concentrate on Tully's use of Barbeyrac, and later briefly remark on his own reconstruction.

A few words should be spent on Jean Barbeyrac. Barbeyrac was a French legal theorist who translated and annotated Grotius' De Jure Belli ac Pacis and Pufendorf's De Jure Naturae et Gentium. He was thoroughly acquainted with their works, and he can be rightly regarded as the best commentator on the modern tradition of natural law and natural rights living in 18th-century Europe. Furthermore, Barbeyrac was a great admirer of Locke. He carefully read Locke's works, admired him for a fine combination of intellect and wisdom, and corresponded with him for a short period of time before Locke's death. His letters to Locke show the extent to which this young French scholar admired Locke's works and England (as the centre of knowledge). Barbeyrac was an Anglophile before Voltaire. Locke sent him the Bible and an English dictionary. In his thankful reply, he wrote: "Plus on médite votre Ouvrage, et plus la lumière, qui y brille de toutes parts" (Correspondence, VII, 6 January 1703; cf. Barbeyrac's letter to Locke in Ibid., VII, May/June 1702, No. 3141, for his admiration for le bon Locke). Given this historical background, it is possible to make a reasonable use of Barbeyrac's writings to construct a new historical picture of Locke.

Yet Tully's use of Barbeyrac is far from being reasonable. He tries to extract claims Barbeyrac never made from two of his writings; first, from the extensive notes which he added to Pufendorf's De Jure Naturae et Gentium, and secondly, from the long discourse on the history of the science of morality which Barbeyrac wrote and appended to Pufendorf's work. Barbeyrac's discourse is entitled, "An Historical

and Critical Account of the Science of Morality, and the Progress it has made in the World, from the earliest Times down to the Publication of this Work". (I shall henceforth call this "Account" Barbeyrac's discourse.) Tully refers to Barbeyrac's notes and his discourse on the science on morality, and advances the following claim:

Barbeyrac clearly thought there was an important link between the two works [i.e., the Essay and the Two Treatises]. This provides the historical justification ... for an attempt to make the link explicit.<sup>13</sup>

Let us note Tully's ambiguity here. He affirms, in the first sentence of the quoted passage, that Barbeyrac "clearly thought" there was an important link between the Essay and the Two Treatises. But in the second sentence, he denies that Barbeyrac "clearly thought" so. Tully feels a need to "make the link explicit". If the link is clear, why is it necessary to make it "explicit"? On the other hand, if the link is implicit, why does he make a contradictory claim that Barbeyrac "clearly thought" there was an important link? Who is obscure here - Barbeyrac or Tully? It is Tully who is systematically obscure. I shall point this out clearly.

First, I shall quote Tully's summary of what Barbeyrac did. He summarizes what Barbeyrac did, without quoting directly from his writings. According to his summary:

Barbeyrac isolates three main lines of the Essay ... which are ... underpinnings of Locke's own political theory. First, he takes Locke's workmanship model [i.e., the model of man as being the workmanship of God] to be the ground of natural law theory in general .... Second, Locke's work on modes and relations is said to be propaedeutic and necessary in understanding natural law political theory. Third, Locke's analysis of real essences is responsible for putting political theory definitely on a superior footing (pp. 4-5, 10-13).

The aspect of Locke's political theory of which these lines of the Essay are supportive is Locke's theory of property (p. 5; 1729: 4.4.2n, 4.4.3n, 4.4.6n, 8.1.3n).<sup>14</sup>



The references to Barbeyrac's writings (his discourse and notes to Pufendorf's work) are indicated by Tully parenthetically in the above passage. However, those references are not at all helpful in clearly identifying Barbeyrac's passage or sentence. Since Tully himself scarcely reports what Barbeyrac actually said, I shall examine his use of Barbeyrac by directly quoting from an English translation of his discourse and notes.<sup>15</sup> Barbeyrac's writings are not easily accessible to modern readers. For this reason I shall present the details of what he actually said. The following discussion is simply my report of what is written in the historical document which few scholars read today. It will become apparent that Tully radically misinterprets Barbeyrac's writings, and invents various non-existing connections between the Essay and the Two Treatises.

Barbeyrac, says Tully, "isolates three main lines of the Essay". What Tully has in mind is Section 2 of Barbeyrac's "Historical and Critical Account of the Science of Morality". In Section 2 of his discourse, Barbeyrac tries to defend the thesis, proposed by Pufendorf and Locke, that the science of morality is capable of demonstration. By the science of morality, or morality, Barbeyrac means "not only what is commonly so call'd; but also The Law of Nature, and Politicks: In a word all that it is necessary for the Conduct of a Man's Self, according to his Estate and Condition".<sup>16</sup> Though Barbeyrac is a great scholar, he is not a philosopher of Locke's stature. Hence, in his attempt to defend the thesis, he quotes Locke's view on the matter as definitive and authoritative, adding a few remarks of his own. This is the use which Barbeyrac makes of Locke's Essay. He is not at all interested in "isolating" any line of thought from the Essay to show the "underpinnings of Locke's own political theory".

Let us take a closer look at what Barbeyrac says in Section 2 of his discourse, and rescue it from Tully's misrepresentation. Section 2 is entitled, "[The Science of Morality] Is capable of Demonstration", and Barbeyrac tries to explain why the science of morality can be made into a demonstrable science like the science of geometry. He begins by expressing the optimistic, 17th-century belief of ethical rationalism. By making use of Pufendorf's idea (expressed in Elementa Jurisprudentiae Universalis), Barbeyrac states: it is "very improbable" that God, who has "given us Faculties sufficient to discover and demonstrate with entire certainty abundance of speculative Things", especially "mathematical Truths", has "not also made us capable of knowing, and establishing with the same evidence, the Maxims of Morality".<sup>17</sup> Then Barbeyrac goes on to claim that there is a philosophy which shows that morality is indeed capable of demonstration. The philosophy is Locke's philosophy. According to Barbeyrac, Locke's chief contribution lies in the fact that he has shown that moral knowledge can be built on our comparison of human actions to a certain rule, independently of our knowledge of the real essence of substances. Barbeyrac summarizes Locke's chief contribution:

It is no Part of the Business in Morality to know the real Essence of Substances; which is what has been attempted without Success, and in all probability will never be brought about; as a great Philosopher of this Age has made appear: All that is requir'd here, is only to examine and compare with Care and Diligence certain Relations, which we conceive between human Actions and a certain Rule (emphasis in the original English translation of Barbeyrac's discourse).<sup>18</sup>

Then Barbeyrac quotes passages from the Essay. First, he quotes the famous passage in IV, iii, 18 where Locke states that if we duly compare the idea of God as a supreme being who made us and the idea of

ourselves as rational beings, then we might place "Morality amongst the Sciences capable of Demonstration". Secondly, he quotes from III, xi, 16 & 17 the passages where Locke says that it is possible to have the perfect knowledge of the precise real essence of the objects which moral words stand for. Thirdly, he quotes from IV, iv, 8, 9 & 10 Locke's statements that moral knowledge is as capable of "real" certainty as mathematics, and that the truth and certainty of moral discourses exist in abstraction from the actual lives of men. Barbeyrac fills two pages, nearly a half of Section 2 of his discourse, with direct quotations from the Essay. The quoted passages naturally contain such technical terms as "modes", "relations", and "real essences". After quoting extensively from Locke, Barbeyrac praises him: "See how this great Philosopher reasons". Then he closes Section 2 of his discourse by adding a remark of his own that the demonstration of speculative principles is "much more compounded, and depend[s] on a much greater Number of Principles" than the demonstration of practical principles.<sup>19</sup>

I have presented an accurate summary of what Barbeyrac says in Section 2 of his discourse. He is trying to defend the thesis that (the science, or knowledge, of) morality is capable of demonstration. For this purpose, he relies on Locke's remarks about "modes", "relations", "real essences" and so forth. Barbeyrac is not trying to "isolate three main lines of the Essay ... which are ... underpinnings of Locke's own political theory", as Tully claims. Barbeyrac does not even mention Locke's own political theory, i.e., the theory he presents in the Two Treatises. Nor does he refer to any other political theory of the 17th century (e.g., Pufendorf's) to claim that Locke's discussions of "modes", "relations", etc. serve as its philosophical underpinnings. In fact, the thesis of demonstrable morality which Barbeyrac defends has nothing

to do with any actual political theory, whether it is Locke's or Pufendorf's. It is a thesis about the theoretical possibility of having the knowledge of "morality" (in the broadest sense of all rules of conduct) by the method of demonstration. Like Pufendorf and Locke, Barbeyrac is seeking for an intellectually reliable method of unfolding the contents of "morality" whose core is the will of God, and rejecting "revelation" as a secure method of unfolding them. This is why Barbeyrac states at the beginning of his discourse that if we are "instructed in this Science" of morality, "there will be no occasion to mount up to Heaven; or to have from thence any extraordinary Revelation for that purpose".<sup>20</sup> The immediate purpose for which he defends the thesis of demonstrable morality (by relying on Locke) is to try to silence the proto-Humean scepticism of Montaigne concerning the demonstrability of morality. Thus in the sections which follow Section 2, Barbeyrac deals with Montaigne's view that moral laws or justice are "the very Emblem of human Infirmary; so full ... of Error and Contradiction" and universal approbation is the only test of the existence of the law of nature.<sup>21</sup> Against scepticism of this sort, Barbeyrac tries to argue with the help of his philosophical hero, Locke, that the core of morality is given by God, and if we diligently apply our intelligence we can demonstrate the contents of morality by a chain of logical consequences. Barbeyrac's defence of the thesis of demonstrable morality and his reliance on Locke's Essay have nothing whatsoever to do with the supposed "underpinnings" of the 17th-century political theories, or Locke's own political theory.<sup>22</sup>

I have shown that Tully is not justified in using Barbeyrac's discourse to establish a link between Locke's doctrines of the Essay and his political theory. I now move on to examine another

claim Tully makes about the Locke-Barbeyrac connection. As I quoted already, he says: "The aspect of Locke's political theory of which these lines of the Essay are supportive is Locke's theory of property". This claim is not at all Barbeyrac's but Tully's own claim, though he refers to Barbeyrac's notes to Pufendorf's work.

Let us see what Barbeyrac actually says in his notes. Barbeyrac refers to Locke's view of property explicitly in two of the notes he appended to Pufendorf's account of the origin of property, and implicitly (i.e., without mentioning Locke's name) in one of the notes he appended to the same account. In note 4 to Bk 4, Ch. 4, Sect. 1 of De Jure Naturae et Gentium, Barbeyrac sums up what is essentially Locke's account of the origin of property, and complains about the obscurity of Pufendorf's reasoning. This implicit reference to Locke becomes explicit in note 4 to Bk 4, Ch. 4, Sect. 4. In this note, Barbeyrac disagrees with Pufendorf's view that the origin of property rests on the tacit, or explicit, compact of all men. He denies the correctness of Pufendorf's compact theory of property: "No, in no wise. It is certain ... that the immediate Foundation of all particular Right, which any Man has to a thing, which was before common, is the first possession" (4. 4. 4., n4). Then Barbeyrac goes on to present a concise summary of Locke's account of the origin of property as a correct alternative to Pufendorf's account (4. 4. 4., n4). The only other reference relevant to Locke's view of property occurs in note 3 to Bk 4, Ch. 4, Sect. 4, where Barbeyrac briefly mentions Locke's refutation of Filmer's claim about Adam's exclusive dominion. Thus Barbeyrac does not even drop a hint that Locke's epistemological doctrine might support his "theory of property".

I have examined Tully's use of Barbeyrac by reporting the details of what Barbeyrac actually said. It is clear that his use is a misuse. A hostile historian of ideas might condemn him as having abused history, or forged historical connections. But such harsh condemnation should not mislead us. The chief cause of Tully's misuse of Barbeyrac is this. He has become a "captive" of the foundationalist picture of philosophy, just like Milam and Yolton. Tully believed, in the first place, that some epistemological doctrines of the Essay must support Locke's political theory. This belief has a root in his own picture of what philosophy is. The belief is then reinforced by Yolton's earlier attempt to seek the epistemological foundations, which Tully takes to be a successful attempt.<sup>23</sup> Given Tully's belief, thus reinforced, it is natural for him to misuse or misinterpret Barbeyrac's writings. As I quoted earlier, Tully says that Barbeyrac "clearly thought" there was "an important link" between the Essay and the Two Treatises. This is a statement which expresses Tully's deeply-held picture of philosophy more than anything else.

Finally, I shall briefly comment on Tully's attempt to reconstruct the epistemological foundations of Locke's political theory out of the Essay. As I said in the beginning, Tully not only relies on Barbeyrac but undertakes the task of reconstruction. In his own words, it is an attempt to "make the link explicit", i.e., an attempt to make explicit the link which Tully believed to exist. Tully's reconstructive discussion is lengthy, and it is an attempt to link the doctrines he extracts from the Essay with Locke's political theory. My treatment of it will be very brief. His reconstruction gets off the ground precisely because he misreads Barbeyrac, and he mistakenly believes that Yolton has already shown how to reconstruct the epistemological

foundations. Since Tully tries to do on a larger scale what Yolton has unsuccessfully tried, he is bound to suffer from the same sort of confusion as Yolton and on a larger scale. I shall comment on two points he makes in his reconstructive discussion. I shall thereby show how his "philosophical underpinnings" collapse.

First, Tully says that Locke's distinction between "archetype and ectype idea" is the "basis" of Locke's political theory. It is the basis in the sense that by virtue of the distinction between the two types of ideas, Locke distinguishes his political theory from "empirical political science", and thereby treats it as a second-order inquiry into political concepts. Locke's own political theory, says Tully, is a discipline where "the investigation of the conceptual connections amongst mixed modes and relations, and of their relations to natural, customary and civil laws, is undertaken".<sup>24</sup> This is a mistake similar to Yolton's. Locke's political theory clearly is not a theory about political concepts, but a theory about political power or government. His Second Treatise is entitled "An Essay concerning the True Original, Extent, and End of Civil Government", rather than "an Essay concerning the True Original, Extent, and End of the Concept of Civil Government". Locke himself clearly states that his political theory deals with a general branch of politics which concerns "the original or societies, and the rise and extent of political power", rather than a particular branch of politics concerning "the art of government" (Works, III, Some Thoughts concerning Reading and Study for a Gentleman, p. 296). The general branch of politics makes use of general norms and facts about mankind which go beyond any particular government. As Locke states in his letter to Richard King, the general branch of politics is "the foundation" for anyone who wishes to have an "insight" into the

constitution of a particular government, and the real interest of his country (Works, X, 507).

It goes without saying that Locke clarifies, from time to time, the concepts or the meanings of the words which he uses in the Second Treatise. But his clarification is intended to solve problems about property and government, rather than any problem about the knowledge of politics or the idea of property. Similarly, Locke points out the obscurity of Filmer's expressions in the First Treatise, in order to show that his doctrine of absolute monarchy is incoherent. The Two Treatises is not a second-order discourse on the idea, or the knowledge, of politics; it is a discourse on politics. It is in the Essay which Locke addresses problems about ideas and knowledge. Like Milam and Yolton, Tully conflates ideas and things. They mix up the idea of property and property, or the knowledge of government and government. This is because they treat Locke's theory of ideas and knowledge as the "basis" upon which the "superstructure" of property and government ought to be erected.

The second point Tully makes in his reconstructive discussion is the following: Locke has a "maker's theory of knowledge" according to which a man is capable of knowing what he has made, and he is incapable of knowing what he has not made.<sup>25</sup> This "maker's theory of knowledge" provides "the philosophical underpinnings for normative political theory, establishing its epistemological superiority over the natural sciences".<sup>26</sup> This claim appears to be the main conclusion of Tully's attempt to make "the link" explicit. But is this conclusion convincing? The answer is no.

To begin with, it is doubtful whether Locke really has a "maker's theory of knowledge". According to Locke, a man is capable of knowing his own existence with the highest degree of certainty (Essay, IV, ix, 3)



though it is God who made a man in the first place. Also, "mixed modes" by definition consist of "simple Ideas of different kinds" (II, xxii, 1), and the "Understanding is merely passive" when it receives simple ideas (II, i, 25). The mind does not make any simple idea. But I shall leave this point aside, since Locke at least holds that moral knowledge consists of "mixed modes" which are made actively by the mind. The crucial question for us is how Tully's "maker's theory of knowledge", or any other theory or claim Locke advances in his epistemology, is related to Locke's own political theory. Tully himself does not answer this question. He simply says that Locke's maker's theory of knowledge provides "the philosophical underpinnings for normative political theory". But what Tully calls "normative political theory" corresponds to what Barbeyrac and Locke call the science of "morality" (in the broad sense of ethics, law, and politics). Hence, he must also show how Locke's claim about the knowledge of "morality" is linked to his particular political theory of the Two Treatises. This he never does. Tully simply confuses the "philosophical underpinnings" of Locke's own political theory with the "epistemological superiority" of moral knowledge in general. Hence, he does not even see the need to explain how the supposed "maker's theory of knowledge" is connected with Locke's own political theory. Furthermore, he is not certain of the very meaning of the expression "philosophical underpinnings". The only clarification he offers is that A "underpins" B in the sense that A's relationship to B is "much looser than formal logical demonstration".<sup>27</sup> Like Yolton, Tully denies that the conclusions of Locke's political theory follow from his "maker's theory of knowledge". But he offers no explanation of how the two theories are connected. In other words, he fails to reconstruct the "philosophical underpinnings" of Locke's political theory.

I now leave aside Tully's failed attempt at reconstruction. I shall conclude my critical discussion by giving general considerations to the relationship between the epistemological status which Locke grants to moral knowledge and the political theory he presents in the Two Treatises. The relationship is one of mutual irrelevance. Locke's claims about the status of moral ideas and moral knowledge in the Essay are not at all connected with his own political theory. To make this apparent, I should like to consider Locke's thesis of demonstrable morality once again, instead of considering the "maker's theory of knowledge" which he may or may not have. Locke advances his thesis of demonstrable morality, without having the slightest intention to use it as a basis of his own political theory. It is an undeniable fact that he wrote the Two Treatises while he was also working on the Essay; hence, without completing the supposed "philosophical underpinnings". His letter to Molyneux, written about two years after the publication of the Essay and the Two Treatises, clearly shows that the irrelevance of his thesis of demonstrable morality to his own political theory. Locke says:

Though by the view I had of moral ideas, whilst I was considering that subject, I thought I saw that morality might be demonstratively made out, yet whether I am able to make it out, is another question (Correspondence. IV, 524).

Of course, by the time Locke wrote this letter, he had already completed his political theory in the Two Treatises. The thesis that we can have a demonstrative system of morality is a theoretical dream which Locke did not fulfil. It is simply supported by "the view I had of moral ideas", and it is simply irrelevant to Locke's political theory.

This is not surprising because Locke's discussion of the demonstrability of moral knowledge is the kind of methodological

discussion which is entirely divorced from what he actually does as a practitioner of the science of "morality". Like Pufendorf and Barbeyrac, Locke tries to make the science of "morality" as certain as the science of geometry. However, their discussions are abstractly methodological; namely, they are divorced from any practice which has developed within the science of morality, and from any practical application of a method. This abstractly methodological spirit resembles the spirit of those post-Millian philosophers who discuss the "inferior" state of moral or social sciences. Since the time of J. S. Mill, quite a few philosophers have put forward the abstract claim that "moral" or "social" sciences are capable of "prediction" just as the science of physics is. The 17th-century version of this abstract claim is that the science of "morality" is capable of "demonstration" just as the science of geometry is. Participants in this type of abstractly methodological discussion try to honour moral or social sciences, by disregarding the practice which has grown or is likely to grow in specific branches of the moral or social sciences. It is in this abstractly methodological spirit that Pufendorf wrote about "the certainty of the moral sciences", and conceived of himself as effectively fighting against the Aristotelian, relaxed attitude toward practical knowledge (De Jure Naturae et Gentium, Bk. 1, Ch. 2). Locke is also abstractly methodological, when he suggests that "morality" might one day be placed "amongst the sciences capable of demonstration". Qua practitioners of the science of "morality", however, neither Pufendorf nor Locke produced a political theory by the method of demonstration. They simply went ahead to produce their political theories, regardless of the truth or falsity of the thesis of demonstrable morality. Barbeyrac was perfectly right in not establishing a

link between Locke's epistemology and his political theory. Tully misread Barbeyrac and tried to reconstruct what cannot be reconstructed.

### III. Liberation from the "Foundationalist" Picture; or Prolegomena to any Future Meta-Discourse

The failure of the project which I have exposed above is partly due to the absence of any serious discourse on Locke's discourses among scholars. Milam, Yolton and Tully read what other commentators had written about Locke's works, before they set out to search for the epistemological foundations of his political theory. Had commentators and scholars been successful in presenting a picture of how Locke's works hang together, they could have avoided carrying out the systematically misguided project. Given the absence of any serious meta-discourse within Locke scholarship, it is to be expected that many would respond to the failure of the project in a wrong way. I should like to begin by illustrating one wrong response.

I shall illustrate the wrong response by presenting Peter Laslett's view of the relationship between Locke's Essay and the Two Treatises. Laslett had expressed his view in his Introduction to the Two Treatises before Milam, Yolton and Tully attempted to engage in their project. Laslett's view is worth considering for the following reasons. First, unlike Milam, Yolton and Tully, he holds that there is no significant philosophical link between the Essay and the Two Treatises. Laslett even denies the status of "a political philosopher" to Locke, on the ground that his political writings are largely inconsistent with his Essay and reveal no trace of an application of

his epistemological or methodological principles. Secondly, we are inclined to accept this view as a correct alternative after we have seen the failure of the project of Milam, Yolton and Tully. Laslett's view strikes us as the very opposite of their failure, and appears to be true for this reason. Thirdly, however, Laslett's view is in fact a false alternative which we must not take. His view represents the wrong response which we are likely to make to the failure of the past.

In his long Introduction, Laslett has made a series of provocative statements about the relationship between the Essay and the Two Treatises. I shall quote them from a hardbound copy of the second (1967) edition of the Two Treatises:

Locke is, perhaps, the least consistent of all the great philosophers (p. 82).

Two Treatises [is] something very different from an extension into the political field of the general philosophy of the Essay (p. 82).

Two Treatises is not written on the 'plain, historic method' of the Essay. If it were, we might expect in the first place that it would insist on the limitations of our social and political understanding .... Then [Locke's material] would have been presented recognizably as the 'complex ideas' or 'mixed modes' of Locke's system of knowledge (p. 83).

[Two Treatises] cannot be said to represent his account of the implications for conduct, for politics, of the doctrines of the Essay. It was written for an entirely different purpose (p. 83).

None of the connecting links is present. It is extraordinary ... how little definition there is in the political work (p. 84).

To call it 'political philosophy', to think of him as a 'political philosopher', is inappropriate (p. 85).

It is pointless to look upon his work as an integrated body of speculation and generalization, with a general philosophy at its centre and as its architectural framework (p. 86).

[There is] not a Lockean philosophy in the Hobbesian sense, [but there is] a Lockean attitude and this can be traced in all that he wrote. [This is an attitude to reconcile] rationalism and empiricism (p. 87).

If a distinction between the philosophy and the attitude of Locke is legitimate, we could fill out the picture of him as a thinker; we could account, for example, for his unwillingness to push any argument to its extreme (p. 88).

I have quoted Laslett's statements at length, not because I intend to examine the truth or falsity of each particular statement, but because I want to show that Laslett approaches Locke's works by making use of his own "foundationalist" picture of philosophy. Although some of his statements, quoted above, touch upon edges of truth, his application of the "foundationalist" picture of philosophy to Locke's works systematically misleads him. The "foundationalist" picture misleads Laslett to three false beliefs. First, Locke's political theory is largely inconsistent with his epistemology. Secondly, Locke is an unphilosophical writer who has produced his epistemology and his political theory for entirely different purposes, and in entirely different "states of mind". Thirdly, there is no philosophical method of inquiry Locke consistently employs in his works.

It is not difficult to show that these three beliefs are false. The belief that Locke is a wildly inconsistent thinker belongs to an old myth. Laslett supports this belief by saying that Locke's claim about the objectively existing law of nature in the Two Treatises is inconsistent with his argument against innate ideas and principles in the Essay. But there is no inconsistency here, since the main proof Locke offers for the existence of the law of nature is a version of the argument from design, i.e., a posteriori argument.<sup>28</sup> In fact,

Locke himself explicitly warns that we should not identify his denial of "an innate Law" with his denial of "a Law of Nature" (Essay, I, iii, 13). The second and third beliefs I have mentioned above may be more difficult to reject as false. Yet the falsity of these beliefs will become clear in the course of the discussion to follow. At the moment, what concerns us is that Laslett's approach to Locke's political theory and epistemology shares one basic assumption with the project of Milam, Yolton, and Tully. The assumption is that we can properly understand the relationship between Locke's political theory and his epistemology by making use of the "foundationalist" picture of philosophy.

This assumption is untenable. Any meta-philosophical discussion of Locke's political theory based on this assumption is likely to be systematically misguided, and will breed false beliefs. My task in this concluding section is to liberate us from our habit of using the foundationalist picture of philosophy in dealing with Locke's works. My task is not to liberate us from this or that particular mistake of the past (e.g., Milam's, Yolton's, Tully's, or Laslett's); but to liberate us from the fundamental cause of their false beliefs about Locke's political theory and epistemology. The fundamental cause is the foundationalist picture of philosophy which many professional academics have, largely due to the unrecognized influence of neo-Kantianism in the English-speaking academic world. I shall present what I take to be Locke's own picture of his philosophical corpus, with particular attention to the Essay and the Two Treatises. Once this picture is shown, we are bound to realize the futility of any future attempt to use the "foundationalist" picture in our meta-philosophical treatment of Locke's political theory. This is what I hope to achieve. What I say below is intended to liberate us from the

illusion of "epistemology". To put it more satirically, I shall present my "Prologemena to any Future Meta-discourse".

Two cautionary remarks may be appropriate here. First, I shall not repeat the definition of the "foundationalist" picture of philosophy which I offered in Section 1. The same definition suffices for the purpose of the following discussion, though captives of this picture themselves are often unaware of the elements which constitute this picture. (I have listed the constitutive elements of this picture in Section I.) Secondly, since Locke himself did not make any direct comment on his own picture of his works, or the place of his political theory in his philosophical corpus, I have adopted a particular policy in trying to grasp Locke's own picture. The policy, in short, is this: DO NOT THINK, BUT LOOK CAREFULLY. In adopting this policy, I have followed in the footsteps of the later Wittgenstein. I have looked at Locke's writings very carefully. What I present is the product of my looking, though I shall intermingle my thought with this product.

#### (i) A Recovery of Parallelism

If we look at the Essay and the Two Treatises, we are struck by the fact that Locke handles two distinct subject-matters in a similar manner. The subject-matter of the Essay is the power of human understanding, or knowledge; whereas the subject-matter of the Two Treatises is the power of a political agent, or government. These distinct subject-matters are handled in a similar fashion. In the Essay, Locke states: it is "my Purpose to enquire into the Original, Certainty, and Extent of humane Knowledge; together, with the Grounds and Degrees of Belief, Opinion, and Assent" (I, i, 2; emphasis added). We can



express Locke's central purpose by offering the following descriptive title to the Essay: "An Essay concerning the Original, Certainty, and Extent of humane Knowledge". The title of the Second Treatise is very similar to this. Let us first look at the title-page of the 1698 edition of the Two Treatises (which Laslett has reproduced in his critical edition): It says: "Two Treatises of Government: In the Former, The False Principles and Foundation OF Sir Robert Filmer, And His FOLLOWERS, ARE Detected and Overthrown. The Latter is an ESSAY CONCERNING The True Original, Extent, and End OF Civil-Government". This clearly indicates that Locke's positive political theory, as distinct from his critique of Filmer's doctrine of absolute monarchy, is presented in the Second Treatise. There is another separate title-page inserted before the Second Treatise: "An ESSAY Concerning the True Original, Extent, and End OF Civil Government".

It is clear, then, that the Essay primarily deals with the "original, certainty, and extent" of human knowledge, whereas Locke's own political theory deals with the "original, extent, and end" of civil government. The parallelism is striking. The only difference, apart from the difference between human knowledge and civil government, is the difference between "certainty" and "end". Locke does not take the view that "certainty" is the purpose of human knowledge (Essay, I, i, 5 & 6); hence, the exact parallel does not hold. Yet it is fairly clear that in dealing with human knowledge and civil government, Locke tries to show how X originates, how far X extends, and what is the end-point (certainty or purpose) of X, where X is either human knowledge or civil government.

Before I go on to a further characterization of the relationship between Locke's epistemology and his political theory, I should like to

emphasize that the descriptive title of the Second Treatise is just as important as the descriptive title I have given to the Essay. This emphasis is needed because Peter Laslett has wrongly dismissed the significance of the title of the Second Treatise. He has treated the separate title of the Second Treatise as Locke's insignificant afterthought, on the ground that the "exact and subtle methods of analytical bibliography" have shown that the title-page of the Second Treatise was "a later insertion, made in the course of printing".<sup>29</sup> Despite Laslett's detective work, the methods of analytical bibliography can only show when the title-page was printed and inserted. Locke himself thought about the "origin", "extent", and "end" of government long before the title-page was printed. I shall present evidence for this, and restore the significance of the separate title of the Second Treatise. Laslett's dismissal of the separate title is a part of his larger misunderstanding that the Second Treatise, as well as the First Treatise, is a refutation of Filmer's doctrine of absolute monarchy. Nothing is further from the truth.

Nearly thirty years before the title-page of the Second Treatise was "printed" and "inserted", Locke began to think about the "origin" and "extent" of political power. In his first political writing, the First Tract on Government (1660), Locke makes use of the idea that "the magistrate's power" is "derived from, or conveyed to him by, the consent of the people" (F. Tract, 122). He uses it as a hypothesis for the sake of his (illiberal) argument that the "magistrate of every nation" must "have an absolute and arbitrary power over all the indifferent actions of his people" in their religious worship (123). He already uses the expressions like the "extent" and "limitation" of the legislator's authority, and "its original" (123). In the Second

Tract, probably written a few years later, Locke gives further considerations to the "sources of civil power" (civilis imperii fontes), namely, the origin of political power as distinct from ecclesiastical power. He puts down a few possible accounts of the origin of political power, without committing himself to any one of them (S. Tract, 229f.). But it is clear that Locke thought about the "origin" of political power. In his view, the question regarding the legislative agent's power over "indifferent things" in religious worship can be "examined a little more profoundly" if "the sources of civil power" are "investigated" and "the very foundations of authority uncovered" (S. Tract, 229).

In 1667, Locke wrote a draft titled "An Essay concerning Toleration", a piece which contains the main arguments for toleration which we find in his published work, A Letter concerning Toleration. In this essay of 1667, Locke also presents a brief outline of his political theory, his theory about the origin, extent, and end of civil government (as distinct from ecclesiastical government). This essay has not attracted the attention of Locke scholars very much, despite the fact that it contains the first clear statement of his liberal political theory and his liberal theory of toleration. The "end of erecting of government", or the "purpose" which the "power, and authority of the magistrate" ought to serve, is "the good, preservation and peace of men in that [i.e., civil rather than ecclesiastical] society" (Bourne, Life I, 174). The "magistrate ought to do or meddle with nothing but barely in order to securing the civil peace and property of his subjects" (175). The "extent" of "politics and government" is limited to things of this world rather than things of the next world. The legislative agent, or the magistrate, is an

"umpire" who is only concerned about "my well-being in this world" insofar as it relates to the well-being of other men; in short, his power extends only to the "public good". It "would be injustice if he should, any further than it concerns the good of the public, enjoin men the care of their private civil concernments, or force them to a prosecution of their own private interests"; the legislative agent "only protects them from being invaded and injured in them by others" (176). I shall quote one more statement from the 1667 essay to show that Locke's political theory of the Second Treatise was more or less taking shape in 1667. The "magistrate has a power to command or forbid so far as they tend to the peace, safety, or security of his people"; they have a power to make "laws ... only for the security of the government and protection of the people in their lives, estates, and liberties, i.e., the preservation of the whole" (180). The tripartite formula of "property" (or "civil concernments") - "lives, liberties and estates" - which Locke frequently uses in the Second Treatise can be found in the essay he wrote in 1667.

Locke developed his political theory and his theory of toleration simultaneously and in parallel fashion. In 1673-4, he offered an analysis of the limits of political power and the limits of ecclesiastical power by comparing one power with the other. This interesting parallel analysis is presented in his paper, titled "On the Difference between Civil and Ecclesiastical Power, Indorsed Excommunication, Dated 1673-4". (The paper was published by King, in his Life of John Locke, vol. 2, "Miscellaneous Papers", pp. 108ff.) The parallel analysis of political power and ecclesiastical power presented in this paper is the basis of the comparison which Locke makes between the two powers in A Letter concerning Toleration. For the purpose of our

discussion, we only need to note that in this paper, Locke uses a phraseology similar to the "origin, extent, and end" of civil government. As he puts it, his comparative analysis shows "the whole end, latitude, and extent of civil power" on the one hand, and "the whole end, latitude, and extent of ecclesiastical power" on the other (King, Life II, 111).

It is clear from the evidence presented above that Locke thought about the "origin", or "extent", or "end" of civil government long before the title-page of the Second Treatise was "inserted" in the course of printing. Laslett's dismissal of the title as an "afterthought" is wrong, even if we consider the contents of the Second Treatise alone. Certainly, Locke makes use of the words like the "original" (or "beginning"), "end", and "extent" (or "bounds") in the text frequently. And we cannot explain the structure of his political theory without using those categories. Let us look briefly at what he wrote before the title of the Second Treatise was printed. In Section 4 of the Second Treatise, Locke states: "TO understand Political Power right, and derive it from its Original, we must consider what State all Men are naturally in" (ST, 4; emphasis added). The titles of Ch. VIII, Ch. IX, and Ch. XI are the following: "Of the Beginning of Political Societies", "Of the Ends of Political Society and Government", and "Of the Extent of the Legislative Power" (emphasis added). The underlined words, of course, appear in the main body of the text. (See ST, 99ff. for "beginning"; 124, 131, 134-5 for "end"; and 131, 135, 142 for the "extent" of political power, or the "bounds" within which it can be exercised).

In order to complete the restoration of the significance of the separate title of the Second Treatise, let us add the following consider-

ations. First, as Laslett himself demonstrated, Locke wrote a substantial portion of the Second Treatise before he wrote the First Treatise, and without reading or responding to Filmer's Patriarcha.<sup>30</sup> The Second Treatise, in other words, contains Locke's own political theory which is largely independent of his efforts to refute Filmer's doctrine of absolute monarchy. Secondly, Locke's mature published work shows that he regarded "the original, extent, and end" of civil government as the proper characterization of his own political theory. In A Letter concerning Toleration Locke frequently speaks of "the original", "bounds", and "end" of legislative power. (See Works VI, 21, 42 & 44). As I have already mentioned in Section II above, Locke himself describes his political theory as dealing with the general branch of politics "containing the original of societies, and the rise and extent of political power" (Works, III, 296).

Now the theme of the Essay which I have pointed out — the "original, certainty, and extent" of human knowledge — can also be traced back to his drafts of the Essay. In Draft A (1671), Locke briefly states that he considers "the extent of humane understanding & what it is capable of" (Sect. 27, p. 92). Beyond happiness and misery, "we have noe [sic.] concernment either of knowing or being" (Sect. 10, p. 56). In Draft B (1671), Locke explicitly states the purpose of his epistemological inquiry by using the same phraseology that we find in the Essay: it is "my purpose to enquire into the Originall, Certainty & Extent of humane knowledg [sic.]" (Sect. 2, p. 37). It is clear, then, that the theme of "the original, certainty, and extent" of human knowledge occupied Locke's thought quite a number of years, just as the theme of "the original, extent, and end" of civil government.

## (ii) Details of Parallelism

We shall now look into the details of Locke's parallelism. By drawing attention to the parallel theme, I have already shifted a burden of proof on the part of those who wish to treat the Essay as a foundational work for Locke's political theory. In what follows, I shall offer a positive account of the relationship between his epistemology and his political theory by taking a clue from the parallel I have noted above. It is fairly clear that Locke himself expected us to treat his discourse on ideas and knowledge as quite distinct from his discourse on property and government; he expected us to understand each discourse in its own right. It is a plain matter of fact that there is no cross reference between the Essay and the Second Treatise. This may be explained, in part, as a result of the anonymous publication of the Second Treatise. Since the Essay was published with Locke's name firmly on its title-page, it would have been pointless for him to make any cross reference. But what is significant is that he did not mention any epistemological principle or doctrine in the Second Treatise. The two discourses, in his own view, are separate and distinct from each other. As he says, in the Essay, "great Provinces of the intellectual World" are "wholly separate and distinct one from another" (IV, xxi, 5). Given the separateness and distinctness of each discourse, we can relate the two discourses only by means of the general categories Locke uses in both discourses. Specific terms which he uses in one discourse alone cannot bridge the gulf between the two discourses. Once we focus on Locke's general categories and his general method, we can discover what is common to the two distinct discourses. If we can discover what is common, then we can relate what appears to be unrelated.

What, then, is common to Locke's inquiry into human knowledge and his inquiry into civil government? There is a common image in the first place. Whether the object of his inquiry is human knowledge or civil government, he tries to show its beginning, its end-point, and what falls between the beginning and the end. But something more definite unites his epistemology and his political theory. The basic category which dominates Locke's inquiry is "power": the power of an intelligent agent (or the power of understanding), and the power of a political agent (or the legislative power). His central concern is to set limits, or bounds, to the power of an agent; or more precisely, to the manner by which an agent exercises its power. In his epistemology as well as his political theory, Locke is opposed to the view that an agent can legitimately exercise its power without a limit. He tries to set limits to the activities of an agent, an intelligent agent or a political agent. By this method, he tries to achieve a practical (rather than theoretical) purpose. He tries to end the disputes which tend to arise from an agent's transgression of the limits. Human knowledge, in Locke's view, arises from an intelligent agent's exercise of his power within certain limits. Similarly, civil government arises from a political agent's exercise of its power within certain limits. Locke's central task is to show what the limits are in the realm of human knowledge on the one hand, and in the realm of civil government on the other hand.

It goes without saying that the Essay discusses a variety of problems, just as the Second Treatise does. But the two works exhibit Locke's predominant concern with the limits, or "bounds", of what an agent can and should do. They also reveal his practical purpose of settling endless disputes, and encouraging the activities of an agent



within its proper sphere. These are the central features which Locke's epistemological inquiry shares with his political theory. I shall defend and elaborate this view by showing how these central and common features manifest themselves in the Essay and the Second Treatise. I shall first turn to the Essay; then to the Second Treatise, and finally to A Letter concerning Toleration to reinforce and supplement my account of the central and common features of the two works.

(a) Locke's Attempt to Determine "the Extent of Human Knowledge", or the Bounds of the Power of Understanding

Though Locke's discourse on the origin, certainty, and extent of human knowledge (together with the grounds and degrees of belief, opinion, and assent) takes up a wide range of topics, there is no denying that his account of "the Extent of Humane Knowledge" (Essay, Bk. IV, Ch. III) is a very important part of his epistemology. If we are allowed to be very crude, we can connect Bk I, Bk II, and Bk III with his account of the extent of human knowledge as follows: Bk I is Locke's rejection of the innatist account of the origin of ideas, while Bk III is a digression as he himself says in III, xxxiii, 19. And Bk II is his account of the true origin of ideas, which is propaedeutic to his attempt to determine the extent of human knowledge. Since human knowledge consists in "the Perception of the Agreement, or Disagreement, of any of our Ideas", it does not extend any "further than we have Ideas" (IV, iii, 1). Given this view, it is understandable why Locke tried to show the origin and extent of our ideas first. By crudely connecting the three books to one chapter titled "Of the Extent of Humane Knowledge", I am merely emphasizing that one of the central purposes of the Essay is to determine the extent of human knowledge.

Though the sheer length of the Essay might obscure the

importance of Locke's task of limiting the scope of human knowledge, he himself clearly states that it is the main goal he tries to achieve in his discourse. At the beginning of the Essay, he says:

If by this Enquiry into the Nature of the Understanding, I can discover the Powers thereof; how far they reach; to what things they are in any Degree proportionate; and where they fail us, I suppose it may be of use, to prevail with the busy Mind of Man, to be more cautious in meddling with things exceeding its Comprehension; to stop, when it is at the utmost Extent of its Tether; and to sit down in a quiet Ignorance of those Things, which, upon Examination, are found to be beyond the reach of our Capacities (Essay, I, i, 4; emphasis added).

He also expresses his concern with the limits, or bounds, of human understanding (hence, knowledge), in explaining the origin of the Essay:

we began at the wrong end, and in vain sought for Satisfaction in a quiet and secure Possession of Truths, ... whilst we let loose our Thoughts into the vast Ocean of Being, as if all that boundless Extent, were the natural, and undoubted Possession of our Understandings .... Thus Men, extending their Enquiries beyond their Capacities, and letting their Thoughts wander into those depths, where they can find no sure Footing; 'tis no Wonder, that they raise Questions, and multiply Disputes, which never coming to any clear Resolution, are proper only to continue and increase their Doubts .... Whereas were the Capacities of our Understandings well considered, the Extent of our Knowledge once discovered, and the Horizon found, which sets the Bounds between the enlightened and dark Parts of Things; between what is, and what is not comprehensible by us, Men would perhaps with less scruple acquiesce in the avow'd Ignorance of the one, and imploy their Thoughts and Discourse, with more Advantage and Satisfaction in the other (I, i, 7; emphasis added).

Let us note why Locke wants to set limits to human knowledge by examining the power of human understanding. As it is indicated in the quoted passages, he tries to distinguish the proper objects of human understanding and knowledge from the improper objects in order to free men from scepticism and unsetttable disputes over "the vast Ocean of Being" (or metaphysical and theological disputes), and thereby encourage

men to "imploy their Thoughts and Discourse, with more Advantage and Satisfaction" in the matters they can understand or know. Locke restates this purpose: if we critically survey the "Powers of our own Minds", "we shall not be inclined" to "sit still" "in Despair of knowing any thing"; nor shall we be inclined to "question every thing, and disclaim all Knowledge". Hence, a critical examination of the powers of the mind is "a cure of Scepticism and Idleness" (I, i, 6). But Locke has another positive purpose: to direct the use of men's limited intellectual powers to their "proper" subject-matter, one of the subject-matters which their narrow understanding can grasp. This subject-matter is "morality", or a regulation of men's conducts. Locke is convinced, from the start, that each man's narrowly limited capacity is sufficient for the knowledge of morality, the knowledge he properly needs to have:

How short soever their Knowledge may come of an universal, or perfect Comprehension of whatsoever is, it yet secures their great Concernments, that they have Light enough to lead them to the Knowledge of their Maker, and the sight of their own Duties (I, i, 5).

Our Business here is not to know all things, but those which concern our Conduct. If we can find out those Measures, whereby a rational Creature put in that State, which Man is in, in this World, may, and ought to govern his Opinions, and Actions depending thereon, we need not be troubled, that some other things escape our Knowledge (I, i, 6).

Later in Book IV of the Essay, Locke states that "morality" rather than "natural philosophy" is "most suited to our natural Capacities", and it is "the proper Science, and Business of Mankind in general" (IV, xii, 11). We cannot know (with certainty) whether matter can think, or whether the soul is immaterial (IV, iii, 6). In these matters as well as in the "experimental Philosophy of physical Things",

we must rely on faith and probability (IV, iii, 6 & 27).

We can sum up Locke's central task and his purpose. He examines the power of human understanding and sets limits to it, in order to put an end to scepticism and endless disputes about metaphysical and theological issues. He additionally recommends men to use their intellectual powers in their proper domain of acquiring moral knowledge. This summary is based on what Locke actually stated in the beginning of the Essay, and also on his similar statements in Draft B of the Essay (secs. 1 & 3). It conforms to Locke's statement about the "History" of the Essay that "a Subject very remote from" human understanding led him and his friends to "examine our own Abilities, and see, what Objects our Understandings were, or were not fitted to deal with" (The Epistle to the Reader, p. 7). It also is in accord with James Tyrrell's statement that the Essay originally arose out of a discussion "about the principles of morality and revealed religion".

Notice that Locke does not try to lay down epistemological principles and doctrines in order to justify other branches of human culture such as political theory and the science of nature. The 17th-century science of nature was not in a state of crisis, and there was no need to justify it. Locke only picks up some scholastic "Rubbish" as an "Under-Labourer" of Boyle, Newton, et al who are "Master-Builders" (The Epistle to the Reader, pp. 9f.). Neither the names like "Boyle" and "Newton" nor Locke's use of models and problems taken out of the 17th-century science of nature should lead us to believe that the Essay is an epistemological groundwork for the 17th-century science of nature. As I have already noted, the positive element of Locke's purpose is to encourage men to acquire the knowledge of morality. But even this positive element is not very constructive. It is rather a hope. Its

concrete expression is his thesis of demonstrable morality. As we saw at the end of Section II, Locke's discussion about the demonstrability of morality is based on his classification of ideas, and it is not meant to be a methodological discussion in any practical sense. His defence of the thesis of demonstrable morality is an attempt to confirm his initial conviction that even the narrowly limited power of human understanding is capable of having moral knowledge. It is not an attempt to support or justify any existing science or theory of morality.

To read the Essay as an epistemological groundwork for another study (of nature, or of morality) is to read it with neo-Kantian spectacles. It is neo-Kantians in 1860's such as Eduard Zeller who granted the status of academic dignity to the discipline of "Erkenntnistheorie", and treated it as the centre of philosophy and the foundation of other sciences or studies. Those neo-Kantians made explicit what was implicit in Kant, by going "back to Kant". At the same time, they shared – or seemed to share – the view expressed by Vaihinger that Locke was the first philosopher to "have a clear consciousness that all metaphysical and ethical discussion must be preceded by epistemological investigations".<sup>31</sup> But whatever neo-Kantians thought of Locke's Essay, why should we accept their judgement so blindly? There is no point in accepting the projection of their self-image onto Locke, which is further twisted by their super-academic efforts to get something out of Kant rather than going straight "back to Kant". If we want to understand Locke, we must go "back to Locke" in the first place.

The Neo-Kantian reading of the Essay is wrong. The fact is that Locke himself produced a political writing at the beginning of his intellectual career before he wrote anything about human understanding;

a "discourse" on the civil magistrate's power over "indifferent things" in religious worship (known as the First Tract on Government, 1660). This discourse is not about "human understanding". It is about the question whether political power can "extend" to people's "indifferent" actions in religious worship (such as making the sign of the cross in baptism, kneeling at the sacrament, and bowing at the name of Jesus). Furthermore, it is fairly clear that Locke's vocabulary of the "extent", "bounds" and "boundaries" in the Essay was originally derived from his political and juridical writings on the "extent" of the power of the civil magistrate, the "bounds" of the law of nature, and the like. The Essay, just like Kant's Critique of Pure Reason, is full of political metaphors which are predominantly juridical. For instance, Locke sets "boundaries" between the jurisdiction of "reason" and "faith". Faith and reason, he says, ought to be "kept distinct by these Boundaries" (IV, xviii, 11); and if "the Dominion of Faith" is confined within its prescribed boundaries, then "Reason" is "not injured" (IV, xviii, 10).

I am not suggesting, falsely, that Locke's discourse on ideas and knowledge was not as important for him as his discourse on politics or toleration. It is undeniable that he attached tremendous significance to his inquiry into the power of understanding. Locke thought his epistemological inquiry to be important and useful, and he was also fascinated with certain aspects of the 17th-century science of nature. But it is quite wrong to ascribe to him the neo-Kantian, "foundationalist" meta-philosophy. Locke did not write the Essay as an epistemological groundwork, i.e., a work which provides justified methods and premises for other discourses such as discourses on politics, toleration, Christianity, education, etc. As we have seen, he wrote it originally for the purpose of cutting off disputes which exceed our

comprehension, and with an additional hope of directing the use of our intellect to its proper subject-matter "morality". This original, practical purpose may escape notice. It is partly because Locke wrote the Essay "by incoherent parcels" and in a "discontinued way" over many years, picking up a large number of topics on his way (The Epistle to the Reader, p. 7). But it is partly because we are under the influence of the 19th-century, neo-Kantian view that "epistemology" or "Erkenntnistheorie", is and ought to be the foundational discipline for other sciences and studies.<sup>32</sup>

The central task of the Essay, or at least one of its central tasks, is a "critique" of human knowledge, i.e., an attempt to set limits to the power of human understanding. This is not an attempt to provide justified methods and premises for any existing discourse. It is mostly a negative attempt to disjustify the methods and premises of the 17th-century metaphysical and theological discourse, while it offers some justification for the hope for a future acquisition of moral knowledge. As John Yolton has shown in his John Locke and the Way of Ideas, Locke's epistemological doctrines had a disturbing effect upon the traditional moral and religious beliefs of his day. But those who responded to the Essay in the 17th and 18th centuries did not ascribe to Locke the "foundationalist" picture of philosophy, as neo-Kantians and our 20th-century followers have done. "Epistemology", or "Erkenntnistheorie", did not emerge as an unambiguously foundational discipline for other studies, until 19th-century German neo-Kantians made strenuous efforts to go "back to Kant". Instead of understanding the Essay via those neo-Kantians, we should relate it to Hume, Kant, and the earlier Wittgenstein. For they are successors to Locke's project of setting limits to human understanding or human knowledge.<sup>33</sup>

Hume, the first legitimate successor, faithfully recaptures the original conception of Locke's epistemological inquiry. In his Enquiry concerning Human Understanding (whose original title was Philosophical Essays concerning Human Understanding), Hume states:

The only method of freeing learning, at once, from these abstruse questions [concerning what is commonly called metaphysics], is to enquire seriously into the nature of human understanding, and show, from an exact analysis of its powers and capacity, that it is by no means fitted for such remote and abstruse subjects. We must submit to this fatigue, in order to live at ease ever after (Enquiry I, p. 12).

Locke's version of living "at ease ever after" is to employ the narrow capacity of human understanding to know "morality", or things which concern our conduct.

- (b) Locke's Attempt to Determine "the Extent of Civil Government", or the Bounds of Legislative Power

Although the Second Treatise addresses a number of problems, and each of its chapters is devoted to a distinct topic, careful reading shows that Locke tries to set limits (or "bounds") to the power of an agent; the natural power of every man, the power of non-appropriators, the power of appropriators, and the power of the supreme political agent called "the Legislative". Just as Locke's account of "the Extent of Humane Knowledge" is a central part of his epistemology, his account of "the Extent of the Legislative Power" (ST, Ch. XI) is a central part of his political theory. Also, just as his account of the origin of ideas is propaedeutic to his attempt to determine the extent of human knowledge, his account of the origin of property (ST, Ch. V) is propaedeutic to his attempt to determine the extent of civil



government. In Locke's view, the legislative power ought to be established in every commonwealth (or a society), because men enter into a commonwealth (or a society) for "the great end" of enjoying "their Properties in Peace and Safety" under "the Laws establish'd in that Society" (ST, 134). Hence, he must show how each man comes to have a property in external possessions before he tries to set bounds to the power, or activities, of the legislative agent.

Let us first see that Locke is preoccupied with the limits of power in his political theory. The powers of various agents are limited in various ways, at different stages of his political theory. In the state of nature prior to appropriation, each man has a liberty (i.e., a power) to do what he thinks fit, provided he stays "within the bounds of the Law of Nature" (ST, 4, 128; cf. 57, 59). The bounds of the law of nature are the obligations which God has imposed on the actions of men. Locke does not sharply distinguish between the obligations so imposed and the disabilities caused by such imposition. The most important obligation of the law of nature is the following: "no one ought to harm another in his Life, Health, Liberty, or Possessions [required for his self-preservation]" (ST, 6). By stipulating this fundamental precept of the law of nature, Locke specifies the limits which each man's action cannot and ought not to exceed. Just as the limits of human understanding serve to stop men's continual disputes over religion and metaphysics, the bounds of the law of nature serve to stop men's continual disputes over one another's life, health, liberty or minimal possessions.

Whereas each man has the minimal, legitimate sphere of actions by virtue of his membership of the human species, each man expands this sphere of actions by his labour prior to the establishment of political

societies in the world. In his account of appropriation, Locke is primarily concerned to limit the power of non-appropriators over appropriators. God gave the world to "the use of the Industrious and Rational", and "He that had as good left for his Improvement ... ought not to meddle with what was already improved by another's Labour" (ST, 34; emphasis added). Locke's secondary concern is to limit the power of appropriators over non-appropriators. In the beginning of the world, says Locke, each man ought to appropriate external goods "within the bounds, set by reason of what might serve for his use" (31). In the successive age of commercial economy, however, the "bounds of his just Property" are relaxed. Each man can justly acquire his possessions, no matter how large they may be, as long as those possessions do not perish uselessly in his hands (46). This relaxation of the "bounds" shows that Locke's primary concern is to limit the power of non-appropriators rather than the power of appropriators. This is a trick Locke plays in Chap. 5 of the Second Treatise, which can be criticized. Once men have acquired unequal possessions and have united into a political society, every man's power is equally limited by positive laws ("one Rule for Rich and Poor" (142)).

Finally, we come to Locke's theory of the state. Its core is an attempt to determine "the Extent of the Legislative Power" (Chap. 11). The legislative power is the supreme power of a commonwealth; and whoever holds this power ought to exercise it within definite "bounds". Unlike Filmer and Hobbes, Locke holds that no political agent ought to exercise its power arbitrarily and without a limit (cf. ST, 138; FT, 9). The "Bounds" of the "Legislative Power of every Commonwealth" are set by the "trust" of "the Society" on the one hand, and by the law of nature on the other hand (ST, 142). The society of men erects the

legislative power with the trust that it shall be "govern'd by declared Laws" (136); and the law of nature commands the legislative agent to preserve mankind (142). Men, according to Locke, unite themselves into a collective society for the purpose of the mutual preservation of their exclusive rights over their lives, liberties and possessions; then, the society sets up a legislative agent with the above-mentioned "trust". Hence, the first "bound" of the legislative agent is this: "The Legislative ... cannot assume to its self a power to Rule by extemporary Arbitrary Decrees, but is bound to dispense Justice, and decide the Rights of the Subject by promulgated standing Laws, and known Authoris'd Judges" (136). Secondly, since the legislative agent is bound to obey the law of nature which commands the preservation of mankind, it ought to preserve its society or maintain its good, "the publick good of the Society" (135). In other words, positive laws ought to be made and executed for the good of the whole society (which consists of the holders of exclusive rights) rather than the good of a particular section. There are two other "bounds" of the legislative power (138-142).

Locke's concern with the limits of power, as we have seen above, is pervasive in his political theory. Let us now see some of the main parallels that exist between his epistemology and his political theory. In his political theory as well as in his epistemology, Locke is dealing with an agent who has a tendency to exercise its power beyond any limit. He tries to cut off endless disputes by confining the activities of each agent within its proper domain. According to his epistemology, no intelligent agent can, or ought to, interfere with the vast ocean of beings which remain beyond his comprehension. Hence, nobody can, or ought to, claim to know whether matter can think, or

whether the soul is immaterial. This method of cutting off endless disputes has its counterparts in Locke's political theory. Two kinds of disputes which are discussed in his political theory ought to be distinguished: disputes among citizens over their rights, and disputes between the ruler and the ruled. First, Locke tries to put an end to interpersonal disputes by limiting the power of every member of a commonwealth. A citizen's power does not extend any further than his private domain, i.e., the domain consisting of his life, liberty and possessions. Anyone who exercises his power over the object of another man's domain arbitrarily is liable to punishment. The laws made by a legislative agent within a commonwealth specify the degrees of punishment, and the state (whose brain is the legislative agent) is nothing but an impartial arbiter to settle interpersonal disputes by its laws, judges, and the collective force of the commonwealth. Secondly, Locke tries to cut off endless disputes between the ruler (i.e., the legislative agent) and the ruled, by limiting the power of the ruler. The chief limit placed on the power of the ruler is that the ruler is "bound" to uphold the rule of law. (The ruler cannot rule arbitrarily; he ought to rule by an impartial application of equal laws.) By confining the activity of the legislative agent to that of making, and enforcing, the laws for the preservation of the lives, liberties and possessions of citizens, Locke tries to remove any conflict between the legislative agent and the body of citizens who have exclusive power over their own lives, liberties and possessions. If the legislative agent violates the limit of its actions, and fails to rule by laws, then the body of citizens - "the people" - can exercise a right to remove the legislative agent. Thus Locke's method of cutting off disputes, the disputes between the ruler and the ruled as well as

those between citizens, is the method of confining each agent's power within its proper domain.

We have seen that Locke's epistemology also encourages each man to use his intellectual power in the domain of moral knowledge (rather than natural philosophy, or geometry). It may be said that an equivalent of this encouragement in Locke's political theory is the view that each man should use his labour power within his own estate.

(c) The Confinement of Power and the End of Disputes:  
A Summary of Locke's Central Strategy

My account of the Essay and the Second Treatise has made it clear that Locke's epistemology and his political theory share at least two prominent features. First, Locke tries to set limits to an agent's exercise of power, in his epistemology as well as in his political theory. In his own words, he sets "bounds" to an agent's power, or the actions of an agent. Secondly, Locke seeks to put an end to disputes which arise from an agent's unlimited exercise of power. These two features can be combined, and expressed as follows: Locke seeks to put an end to disputes by limiting the power of an agent.

Some commentators may doubt whether the two features I have singled out as the common features of Locke's epistemology and political theory are really central to his inquiry. This doubt is reasonable, since Locke himself did not comment on the relationship between his epistemology and his political theory, or between the Essay and the Second Treatise. As I said before, he produced the two discourses in the hope that they could be understood independently. However, from the viewpoint of a meta-discourse which I am conducting at the moment, it is important to understand that Locke's theory of knowledge and his theory of politics are two manifestations of his general inquiry into

the limits of the power of an agent. The purpose of this general inquiry, as I said, is to cut off endless disputes. It is a practical purpose. In what follows, we shall see another manifestation of Locke's general inquiry: his theory of toleration. I shall discuss A Letter concerning Toleration below, in order to show that my meta-discourse has so far concentrated on what is, and was, really central to Locke. We shall see that in his theory of toleration, just as in his epistemology and political theory, Locke was preoccupied to set limits to the power of an agent for the purpose of putting an end to disputes. A Letter concerning Toleration contains a summary of my characterization of the central, common features of Locke's epistemology and his political theory. (In this paragraph as well as in the preceding paragraph, I have spoken of "an agent" in the singular. But it should be understood that Locke set limits to the powers of different kinds of agents, where politics and toleration are concerned. In his epistemology, every man is treated as an intelligent agent of the same kind; hence, his epistemology concentrates on one kind of agent. In this respect, it differs from his political theory or his theory of toleration.)

Locke opens his discourse on toleration by commenting on religious fanaticism. His comment is a reproduction of the main theme of the Essay which we have already noted:

the establishment of opinions [in religious disputes] ... for the most part are about nice and intricate matters, that exceed the capacity of ordinary understanding (Works, VI, 7; emphasis added).

What is central to Locke's discourse on toleration is the view that ecclesiastical power and political power ought to be exercised within entirely distinct domains, for entirely distinct purposes. Locke specifies the end and extent of ecclesiastical government as well as the

end and extent of civil government, and repeatedly emphasizes that the two ought to be kept sharply separate. It is on the basis of the sharp separation of ecclesiastical power and political (or civil) power that he discusses "how far the duty of toleration extends" (Works, VI, 16). We shall focus on this basis, rather than Locke's specific claims about the duty of toleration.

Locke says that it is "above all ... necessary to distinguish exactly the business of civil government from that of religion, and to settle the just bounds that lie between the one and the other" (Works, VI, 9). The end of a commonwealth is to preserve and promote the "civil interests" or "civil concernments" of its members, i.e., their lives, liberties, and possessions, by an impartial execution of laws. The "whole jurisdiction of the magistrate reaches only to these civil concernments"; "it neither can nor ought in any manner to be extended to the salvation of souls" (Works, VI, 10). The end of ecclesiastical power, on the other hand, is "the public worshipping of God, in such a manner as they [ i.e., free and voluntary members of a church ] judge acceptable to him, and effectual to the salvation of their souls" (13). "All discipline ought therefore to tend to that end, and all ecclesiastical laws to be thereunto confined" (16). Nothing relating to civil concernments ought, or can, be "transacted" in the "religious society" called a church; "No force is here to be made use of ... for force belongs wholly to the civil magistrate" (16). On the basis of the distinct ends and extents of civil power and ecclesiastical power, Locke goes on to discuss "the duty of toleration". The details of his discussion do not concern us. He claims, for instance, that no private person has any right "to prejudice another person in his civil enjoyments, because he is of another church or religion". The reason is that a man's civil concernments are "not the business of religion" (17).

What concerns us here is the fact that Locke repeatedly emphasizes the distinctness and separateness of civil power and ecclesiastical power. By limiting the two powers, he confines the activities of the magistrate and of the church in separate domains. By this method, he tries to put an end to any dispute between the realm of politics and the realm of religion. Let us confirm these two points by Locke's text.

I shall quote one of the many passages where Locke emphasizes that ecclesiastical power is distinct from political power.

[The power of the clergy] ought to be confined within the bounds of the church, nor can it in any manner be extended to civil affairs; because the church itself is a thing absolutely separate and distinct from the commonwealth. The boundaries on both sides are fixed and immovable. He jumbles heaven and earth together, the things most remote and opposite, who mixes these societies, which are, in their original, end, business, and in every thing, perfectly distinct, and infinitely different from each other. No man therefore, with whatsoever ecclesiastical office he be dignified, can deprive another man, that is not of his church and faith, either of liberty, or of any part of his worldly goods, upon the account of that difference which is between them in religion (Works, VI, 21; emphasis added).

Religious intolerance, in Locke's view, is the use of force to convert men to any religion, whereas "toleration" is nothing but "the removing of that force" (Works, VI, A Second Letter concerning Toleration, 62). Hence, intolerance is a form of conflating the two distinct and separate domains of politics and religion. It is to remove, confusingly, the "fixed and immovable" "boundaries". The bounds of the two powers, or the two agents (i.e., the civil magistrate and the church), are the bounds which Locke has prescribed. Thus he uses the method of inquiry common to the Essay and the Second Treatise, i.e., the method of setting limits to an agent who tends to use its power unlimitedly. In his



discourse on toleration, Locke sets limits to the powers of the church, the state, and private members of any particular church.

The bounds Locke prescribes are called the "just" bounds (Works, VI, 9). To be tolerant is to stay within these just bounds; namely, to abstain from taking or using what properly belongs to the realm of politics for a religious purpose. All men including the highest priest and the civil magistrate ought to stay within the "just bounds". By prescribing the "just bounds", Locke tries to put an end to the on-going contest and confusion between the church and the state. He comments on those "heads and leaders of the church" who were "moved by avarice and insatiable desire of dominion" to preach that "heretics are to be outed of their possessions, and destroyed" (53). They are the men who "mixed together, and confounded two things, ..., the church and the commonwealth" in resorting to the use of force (53). Locke's solution to this "unhappy agreement" between "the church and the state" is to confine each agent within its proper domain:

if each of them would contain itself within its own bounds, the one attending to the worldly welfare of the commonwealth, the other to the salvation of souls, it is impossible that any discord should ever have happened between them. (54).

Just as in the Essay and the Second Treatise, Locke tries to solve disputes by confining the power of each agent within its proper domain.

Locke's discourse on toleration is, of course, not simply about the relationship between the church and the state. Throughout his discourse, he urges every Christian to render what is religious to its proper sphere, and to render what is civil (or political) to its proper sphere. Each man's care of his soul ought to be left to each man who may freely choose to join a church; and what is God's — his power to dispense justice in the next world — ought to be left to God. Each

man's care of his life, liberty and possessions ought to be left to himself, rather than the church or the civil magistrate. And the public punishment of those who violate another man's civil concerns ought to be left to the civil magistrate who rules by an impartial application of equal laws. Locke's method of containing each agent's power within its proper domain is a method of giving everyone his due, or rendering to every agent what is "his own". He tries to do "justice" to the religious as well as the political; the clergy as well as the civil magistrate; God as well as citizens.

Let me summarize my account of the central features which are common to Locke's theory of knowledge, his theory of politics, and his theory of toleration. The basic category of Locke's inquiry is "power", or an agent who has power. His general method is to set limits to the power of each agent. His general purpose is to end disputes. We are now in a position to see Locke's three discourses as specific manifestations of his general inquiry into the limits of power. The spirit of Locke's general inquiry, as I have indicated in the preceding paragraph, is suum cuique tribuere ("to render to everyone his due (his right, or his own)"). We should interpret the Stoic maxim of justice negatively in this context, just as Locke and other modern theorists after Grotius have interpreted it negatively. It means: abstain from what is everyone's due; or leave intact what properly belongs to everyone; or preserve what is everyone's own. Though Locke tries to end disputes by containing the powers of agents within their distinct domains, his main task is to state, clearly and distinctly, what are the proper domains of the agents. Once he demarcates each agent's proper domain, or once he determines the "extent" of each agent's power, then he only urges every agent to stay within his own domain.

If every agent minds his own business, then justice and peace are negatively established among all agents - intelligent agents, appropriators, non-appropriators, the supreme political agent, and the church. In Locke's view, disputes and injustice disappear if everyone minds his own business. The spirit of his inquiry which runs through his three discourses, then, is this: Mind your own business, and disputes will cease. Or to adapt one of Locke's propositions of demonstrable morality for our purpose, we can say, "Where everyone minds his property, there is no injustice".

### (iii) The Bounds of a Discourse

If we are to think about the possibility of a successful meta-discourse in the future, it is not sufficient to detect Locke's pervasive concern with the limits of power, or his hope for the end of disputes. We must recognize another peculiarity of his discourses. Locke sets limits to his discourse, and various segments of his discourse. He treats one discourse as distinct and separate from another discourse; one segment of a discourse from another segment of the same discourse. He draws sharp boundaries between the topics he discusses, and develops his views within a narrowly demarcated territory. In short, Locke limits his discourses and parts of his discourses, just as much as he limits the powers of the agents he discusses.

This peculiar feature makes it difficult to relate a part of the Essay to another part, or a part of the Second Treatise to another part. It makes it extremely difficult to relate a part of the Essay to a part of the Second Treatise. Often, though not always, a connecting link is simply absent because of Locke's preoccupation with the bounds of a

discourse. Every attentive reader would notice how frequently Locke makes qualifying remarks of the following type: "it is not my present purpose to discuss ...", "I shall not meddle with this question at the moment ...", or "I shall have occasion hereafter to consider this". Any writer may make this type of qualifying remark, if he wishes to indicate that one question (discussed in one place) is distinct from another question (discussed in another place, or not discussed at all). But Locke makes qualifying remarks too often. Why? The reason is the following: he is preoccupied with the idea of setting limits to the questions he deals with; and he wishes to respect the "just bounds" of his discourse within which he is supposed to stay. In what follows, I shall substantiate this point by quoting extensively from Locke.

Examples of Locke's typical qualifying remarks can be found everywhere in his writings. In the Preface to his first writing, he already stated the following:

I have chose [sic.] to draw a great part of my discourse from the supposition of the magistrate's power, derived from, or conveyed to him by, the consent of the people .... Not that I intend to meddle with that question whether the magistrate's crown drops down on his head immediately from heaven or be placed there by the hands of his subjects, it being sufficient to my purpose that the supreme magistrate of every nation what way soever created, must necessarily have an absolute and arbitrary power over all the indifferent actions of his people (F. Tract, 122f.).

The key expression we must note is this: "I" do "not" "intend" to "meddle with" another question. It might appear that like so many academic writers, Locke is simply distinguishing what he intends to discuss from what he does not intend to discuss. If this is the case, then there is nothing peculiar about his mode of writing or thinking. Yet there is more in Locke than the academic convention. Let us look at more of his qualifying statements:

"I shall not at present meddle with the Physical Consideration of the Mind" (Essay, I, i, 2).

"The Reason of this, I shall shew, in another Place" (II, iv, 6).

"... of how vast an extent it is, I shall have occasion to consider hereafter" (II, ix, 4).

"This might carry our thoughts farther, were it seasonable in this place" (II, xx, 6).

"I shall not now enlarge any farther on the wrong judgments, and neglect of what is in their power .... This would make a Volume, and is not my business" (II, xxi, 70).

"But of this, more in its due place" (FT, 11).

"What this Duty is, we shall in its due place examine" (FT, 66).

"But if any one had began [sic.], and made himself a Property in any particular thing, (which how he, or any one else, could do, shall be shewn in another place) ..." (FT, 87).

"Every Transgression may be punished to that degree .... Every Offence that can be committed in the State of Nature, may in the State of Nature be also punished .... it would be besides my present purpose, to enter here into the particulars of the Law of Nature, or its measures of punishment ..." (ST, 12).

"But this bye the bye. To return to the argument in hand" (ST, 42).

"It is not my business to inquire here into the original of the power or dignity of the clergy" (Toleration, Works, VI, 21).

Again and again, Locke reminds himself and his readers of his "present purpose" or "business", by indicating what his present purpose or business is not.

The sentences which I have quoted above are not, properly speaking, cross references. He does not specify where he will discuss the question he says he will. All he is suggesting is that he is discussing one question now, and he will discuss another distinct

question in "another place". Rosalie Colie, who has examined Locke's skill as an essayist, has consequently found his qualifying remarks "distracting".<sup>34</sup> Distracting as they may be, we need to explain why Locke made those remarks so frequently. It is a perverse interpretation to say that Locke was trying to avoid discussing some difficult problems, or he was trying to conceal his ambiguities and inconsistencies. No sufficient evidence exists for this interpretation. The correct answer is that Locke was in the habit of distinguishing one question sharply from another question, and he hesitated to transgress the sharp boundaries he himself had drawn. He became apologetic, and tried to justify himself, when he realized that he had transgressed the self-imposed limit. His apologetic and justifying stance is apparent in quite a few passages. I shall produce some examples:

"True notions concerning the nature and extent of Liberty are of so great importance, that I hope I shall be pardon'd this Digression, which my attempt to explain it, has led me into. The Ideas of Will, Volition, Liberty, and Necessity, in this Chapter of Power, came naturally in my way" (Essay, II, xxi, 72).

"I hoped this transgression, against the method I have proposed to my self, will be forgiven me, if I have quitted it a little, to explain some Ideas of great importance; such as are those of the Will, Liberty, and Necessity, in this place, where they, as it were, offered themselves, and sprang up from their proper roots" (first edition, Chapter on "Power", sect. 46).

"Though I shall have occasion to consider this more at large, when I come to treat of Words, and their Use: yet I could not avoid to take this much notice here ..." (Essay, II, xxii, 8).

"the method I at first proposed to my self, would now require, that I should immediately proceed to shew, what use the Understanding makes of them [i.e., our ideas], and what Knowledge we have by them. This was that which, in the first general view I had of this Subject, was all that I thought I should have to do: but upon a nearer approach, I find, that there is so close a connexion between Ideas and Words ... that it is impossible to speak clearly and distinctly of our Knowledge ... without considering, first, the Nature, Use, and Signification of Language; which therefore, must be the business of the next Book" (II, xxxiii, 19).

In the second passage quoted above, Locke speaks of the "transgression, against the method I have proposed to my self". The "method" here seems to refer to the "present Business" he states in Section 2 of Chapter on "Power": "my present Business" is "not to search into the original of Power, but how we come by the Idea of it". Locke certainly does not confine himself to the task of explaining how we come to have the idea of power in that chapter. In the fourth passage quoted above, Locke again speaks of the "method" he proposed to himself. This method refers to the plan he laid down at the very beginning of the Essay, the plan or "my Purpose" (I, i, 2; also 3) which does not include a discussion of language and words. Thus Locke is apologizing for, and justifying, his violation of the limits he imposed on his discourse. He is saying that he is not strictly minding his own business.

To Locke, it is important to stay within a sharply delimited domain of problems. He seems to think that an intellectually responsible man can, and should, solve one problem at a time by sharply separating it from a seemingly similar problem. In fact, he became indignant when his critics ignored the sharp boundaries he had drawn between different segments of his discourse. Locke harshly condemned James Tyrrell on this ground. In the letters which Tyrrell wrote to Locke in 1690 (June and July), he complained that his account of "the divine law" in the first edition of the Essay was not very clear (Essay, 1st. ed., II, xxvii, 7-8; in later eds., II, xxviii, 7-8). Tyrrell misunderstood what Locke meant by "the divine law", partly because he did not read the Essay very carefully and partly because he was vulnerable to the unfounded opinion of his friends in Oxford. Whereas Locke meant by "the divine law" the law of nature as well as the

revealed law of God, Tyrrell thought that it would mean the revealed law alone. What made the matter worse is that Tyrrell made the following comment in his letter to Locke:

you doe not expressly tell us, where to find, this Law, unlesse in the SS. [i.e., the Scriptures] and ... it is likewise much doubted by some whether the Rewards and punishments you mention can be demonstrated as established by your divine Law ... (Correspondence, IV, 107f.).

This comment infuriated Locke, because it entirely ignored the bounds of his discourse, i.e., the "present business" he was engaged in at a particular part of his discourse. His indignant reply is the clearest expression of his concern with the bounds of a discourse, or the bounds of a part of his discourse. For this reason, I shall quote Locke's reply at length:

in the present case demonstration of future rewards and punishments was no more my business then whether the Squaring of the circle could be demonstrated or no. But I know not how you would still have me besides my purpose and against all rules of method run out into a discourse of the divine law shew how and when it was promulgated to mankind demonstrate its inforcement by rewards and punishments in another life in a place where I had nothing to do with all this and in a case where some mens bare supposition of such a law whether true or false servd my turne. 'Twas my businesse there to shew how men came by moral Ideas or Notions and that I thought they did by comparing their actions to a rule. The next thing I endeavour to shew is what rules men take to be the standards to which they compare their actions to frame moral Ideas and those I take to be the divine law, the Municipal law and the law of reputation or fashion. ... If I am out in either of these propositions I must confesse I am in an error ... 'tis not of concernment to my purpose in that chapter they [i.e., the rules] be as much as true or noe but only that they be considerd in the mindes of men as rules to which they compare their actions and judg of their morality. ... I did not designe here to treat of the grounds of true morality which is necessary to true and perfect happinesse and 'thad been impertinent if I had so designed: my business was only to shew whence men had moral Ideas and what they were and that I suppose is sufficiently don in that chapter. (Correspondence, IV, 4 August 1690, 112f.; emphasis added.)

Locke's message to Tyrrell is, in short, this: I have properly done my business, and you are unjustly complaining about things which I have nothing to do with.



From all these considerations, it is clear that Locke was preoccupied to solve each problem within a narrowly confined territory by his own intellectual labour. From his viewpoint, Tyrrell merely "meddled with" his proper business in a particular part of his discourse, without launching a just criticism which should take into account his intellectual labour within that narrow domain. "Meddling" is the word which Locke frequently used to criticize those procedures and actions which do not respect prescribed limits. Locke himself, as we have seen, did not wish to "meddle" with another question which is to be dealt with in another place. Two years before he wrote the angry letter to Tyrrell, he complained about Tyrrell's personality to Edward Clarke: "Mr. Oakley [i.e., James Tyrrell] meddles in business wherein he has neither commission nor knowledge, and loves to be talking he knows not what" (Correspondence III, 472; also, 405 & 455 for Tyrrell's "impudent meddling" and his "medleing, without order, in a businesse, he was wholly a stranger to").<sup>35</sup> Meddling with another domain of a discourse seems to be just as wrong as meddling with another man's personal affairs. Locke also condemned Filmer's acts of meddling with, or conflating, distinct senses of words. Filmer "hudl[es] several Suppositions together ... and in doubtful and general terms makes such a medly and confusion" (FT, 20). This meddling is different from meddling with another domain of a discourse, or another man's personal affairs. Yet any act which does not respect its proper limits, in Locke's view, ought to be condemned.

Let us note that what Locke said to Tyrrell applies to any commentator who conflates the domain of Locke's epistemological discourse with the domain of his political discourse. One discourse is about ideas and knowledge, whereas the other discourse is about property and

government. Locke's views about the idea of "secondary qualities", or "mixed modes", or "real essences", properly belong to his discourse on ideas and knowledge. They have nothing to do with his discourse on property and government. We have seen that Milam, Yolton and Tully conflated the two discourses. Locke could have said to them: My "business" in Chapter 5 of the Second Treatise is to show how men "came by" property and it is "a place" which has "nothing to do with" ideas or knowledge. Indeed, if we trace Locke's views of "mixed modes", etc., then we simply end up in a spot within the confined territory of his discourse on ideas and knowledge, without ever being able to reach his political theory. We run up against the bounds of his epistemological discourse, and if our temptation to seek for epistemological foundations is strong, we overcome the existing boundaries by the method of conflation.

Without exaggeration, we can say that Locke's preoccupation with the bounds of his discourse is just as deep as his preoccupation with the bounds of the power of an agent. In one case, he is concerned about the proper domain or business of a discourse, or a segment of a discourse; and he tries to avoid meddling with another separate domain or business. In the other case, he is concerned about the proper domain or business of an agent; and he tries to prevent one agent from meddling with another's business. In both cases, the same ideas control Locke's thought - "property" and "justice".

#### (iv) Towards a Future Meta-Discourse

I have presented a new picture of Locke's discourses, in place of the old "foundationalist" picture. His discourses, or at least his three main discourses, are linked by his general method of setting limits

to the powers of agents, and his general practical aim of ending disputes. Those discourses are distinct from one another, in that they deal with distinct problems. They are independent of each other, in that one discourse does not depend on the conclusions of another discourse. Within the distinct sub-domains of each discourse, Locke also discusses distinct problems without (necessarily) relying on the conclusions he obtains elsewhere.

One of the reasons why Locke scholars have continued to use the "foundationalist" picture of philosophy in linking his epistemology to his political theory is that they have been unable to conceive of any alternative picture of his works. Now I have presented an alternative picture of sharply-bounded, horizontally-linked discourses. I have also shown the miserable failures of the past attempts to seek for the epistemological foundations of Locke's political theory. In this final section, I shall urge that anyone interested in a meta-discourse on Locke should do two things. First, he should abandon, once and for all, the foundationalist approach to Locke's discourses. Secondly, he should try to enrich the picture I have presented as much as possible. I shall expand on these two points.

Some of our stubborn foundationalists might prefer to retain a hope: although epistemology, for Locke, is not the foundational discipline for another discipline such as political theory, we may successfully construct the epistemological foundations of his political theory by making use of his Essay. This is an idle hope. It is idle to hope that one day, a very skillful commentator may successfully construct such foundations. We must abandon this hope completely. The reason for complete abandonment is that since any such attempt is an attempt to create fictitious foundations which have nothing to do

with Locke, it fails to clarify any part of his political theory or its relationship to his epistemology. An epistemological basis of Locke's political theory (or any of his discourses, for that matter) cannot be found in his Essay. And it is foolish to treat his epistemology as if it could provide some support for his non-epistemological discourses.

Let us consider how foolish it is to remain addicted to the old "foundationalist" picture, and to retain the hope of constructing an epistemological basis of Locke's political theory. Suppose that we look for an epistemological doctrine in the Essay which can possibly be re-interpreted as supporting, or justifying, a portion of Locke's political theory. It is very difficult to find such a doctrine in the Essay. Here as well as elsewhere, we mean by an "epistemological doctrine" a doctrine about ideas or knowledge. Locke's account of a man's "liberty" in the Essay, II, xxi, for instance, has a certain connection with his discussion of a man's "liberty" (of disposal) in the Second Treatise (58, 63). But his account of a man's "liberty" in the Essay is not an epistemological doctrine. One might suggest, then, that Locke's account of the idea of power, as distinct from his "digression" into a discussion of liberty, necessity and will, can possibly be re-interpreted as an epistemological basis of his political theory. This suggestion does not seem to be utterly implausible, since the concept of "power" is fundamental to Locke's discourses including his discourse on property and government.

What happens if we take this suggestion seriously? We are bound to be fooled by our own fiction. Locke's account of the idea of power (as distinct from his "digression") is primarily an account of how we come to have the idea of power (Essay, II, xxi, 1). Unlike Hume, Locke does not challenge the presupposition that our idea of power is clear,

or intelligible. What Locke does in the Second Treatise (and other works), of course, is to use the idea of power, or the word "power". So we must ask: what is the connection between Locke's account of the origin of the idea of power and his political theory? There is no causal connection. Locke did not use the idea of power in his political theory, as a result of giving a particular account of the origin of the idea of power. (From the beginning of his intellectual career, Locke used the concept of power.) There is no logical connection, either. Anyone can use the word "power", or the idea of power, even if he cannot give a true account of how we acquire the idea of power. Locke's use of the idea of power in the Second Treatise is certainly independent of the truth, or falsity, of his particular account of the origin of the idea of power in the Essay. All we can assert is that we can treat Locke's account of the origin of the idea of power as a justificatory device for his use of the idea of power in his political theory; or more precisely, as if his account of the origin of the idea of power had been designed to justify his use of the idea in his political theory. Certainly, we can give this as-if treatment in the sense that it is possible for us to do so. But it is highly undesirable to do so. Does it clarify any part of Locke's political theory which might otherwise be neglected? No. To understand that Locke uses the idea of power in his political theory, we only need to observe that he actually uses the idea of power or the word "power" in the Second Treatise. By constructing this foundation, we gain nothing. It only satisfies our pre-existing inclination to treat Locke's works in accordance with our "foundationalist" picture. Furthermore, if we forget that this reconstruction is based on our inclination and has nothing to do with Locke, then the reconstruction will serve to cherish the false belief that Locke probably

gave an account of the origin of the idea of power in order to justify his use of the idea of power in his political theory. If we do not wish to cherish this false belief, then we must always keep reminding ourselves that this reconstruction has no basis in Locke's thought, but is a fictitious product of our own. But why should we take this twisted, indirect approach to Locke's works? Why should we create a fiction only to destroy it afterwards? If a fictitious construct serves a useful purpose, then it is worth creating it. But this fiction serves no purpose. It is merely a waste of intellect; and if we are forgetful, we will perpetuate various false beliefs about Locke's discourse. For the purpose of a fruitful meta-discourse, we must abandon this fictitious construct in the first place. Instead, we should take a direct, straightforward approach to Locke's discourses.

I have illustrated above the futility of any future attempt to construct an epistemological basis of Locke's political theory out of his Essay. I say "any" future attempt, though I have considered only one possible attempt. Since no epistemological doctrine of the Essay supports his political theory in reality, any attempt to construct an epistemological basis of it out of the Essay is an attempt to create a fiction. This fiction deceives us because it gratifies our pre-existing inclination to treat Locke's epistemology as the foundation of his political theory. If we create a fiction of this sort, we feel that we have solved our "problem". But this "problem" is a pseudo-problem which arises out of our false, prior belief that Locke's epistemology must support his political theory. Once we get rid of this belief, then our "problem" gets dissolved. Then we do not need to struggle to create a superfluous fiction. There are other epistemological and methodological doctrines in the Essay which look as if they

could justify what Locke does in his political theory.<sup>36</sup> But no matter how hard we may try, our as-if construct cannot elucidate any real relationship between Locke's epistemology and his political theory. It only serves to solve our pseudo-problems, the problems which arise from our prior addiction to the foundationalist picture of philosophy.

We must, therefore, abandon any future attempt to treat Locke's discourses by using our old philosophical drug, i.e., the foundationalist picture of philosophy. The dream of a successful, future attempt to construct an epistemological basis of Locke's political theory is nothing but the dream of a drug addict. If a man takes heroin habitually, he may feel he can construct something valuable and solve his problems without actually giving up his heroin. What he needs, of course, is a total conversion. He must turn away from the drug which creates his problems in the first place. Likewise, what we need is a total conversion. We must turn away from the old foundationalist picture. Our future meta-discourse must be a healthy discourse which does not conflate the real and the fictitious, the true and the false. A Gestalt switch is required for this healthy, future meta-discourse.

We can perform the required Gestalt switch by accepting the new picture of Locke's discourses I have already presented. The vigor of a future meta-discourse, I take it, depends on the efforts of Locke scholars to enrich this new picture. But I shall not be so optimistic as to believe in the unlimited possibility of our future meta-discourse. On the contrary, we should expect only a limited amount of enlightenment from our future meta-discourse. This is due to the sharp boundaries which separate one of Locke's discourses from another, and one part of his discourse from another part. Nevertheless, we can enrich the new picture by trying to find what is common to his separate discourses, and their various segments.

We can link Locke's discourses by taking up his general idea (e.g., his concept of human nature, his concept of liberty), and tracing various modifications of this general idea across his discourses. This method has in fact been already adopted by Hans Aarsleff and Raymond Polin.<sup>37</sup> We can also extract common themes and common concepts from Locke's frequent use of analogy, or his parallel analysis of distinct subject-matters. We should try to detect various parallels in Locke's treatment of distinct subject-matters, because this is almost the only way to invigorate our meta-discourse. The parallels which we frequently come across in Locke's discourses may appear to be superficial at first sight. Yet they are often indicative of his deeply held beliefs or his deeply entrenched modes of thought. For this reason, too, we must be very attentive to any existing parallel in Locke's writings. I shall indicate below that there are more parallels than I have already noted.

The acquisition of the knowledge of the law of nature is analogous to the acquisition of external goods such as gold and silver. Locke draws the following analogy in the second essay on the law of nature: Neither the knowledge of the law of nature nor natural resources are given to "idle and listless people". They can only be acquired "with great labour". In order to acquire the gold and silver hidden in darkness, we need to use our "arms and hands" diligently. Similarly, in order to acquire the knowledge of the law of nature, we need to exercise our "mental faculties" diligently (ELN, II, 135). Locke's analogy here is designed to illustrate the point that though our mental faculties "can" lead us to the knowledge of the law of nature, not everyone makes "proper use" of his mental faculties (Ibid., 133). The "proper use", according to Locke, involves a diligent study.



Most people, he says, are lazy. They are "little concerned about their duty", and guided mostly by "the example of others", "traditional customs", "the fashion of the country", and "the authority of those whom they consider good and wise" (Ibid., 135).

What Locke is claiming, therefore, is that every man can, and ought to, acquire the knowledge of the law of nature by diligently exercising his own powers, and independently of the authority and tradition of other men. In the Essay, Bk I, he restates this view with respect to ideas and knowledge in general: God "fitted Men with faculties and means" to acquire ideas and truths, and men ought not to "misemploy their power" "by lazily enslaving their Minds, to the Dictates and Dominion of others, in Doctrines, which it is their duty carefully to examine" (Essay, I, iv, 22). This political or juridical metaphor is significant. It indicates that Locke's discourse on ideas and knowledge and his discourse on property and government are united by the common belief that every man can, and ought to, exercise his powers diligently and independently of the dominion of other men. According to the Second Treatise, all men are naturally "furnished with like Faculties", without any subordination among them (ST, 6). Everyone can, and ought to, acquire a property in external goods by his hard work, and independently of the labour of others, prescriptive rights, and the authority of a monarch.

We can further develop the parallels involved in the two discourses. For instance, we can draw attention to Locke's egalitarianism about men's abilities (i.e., powers, or faculties), and his libertarianism about their actual achievements. God has fitted men with equal mental faculties, and the "great difference that is to be found in the Notions of Mankind, is, from the different use they put

their Faculties to" (Essay, I, iv, 22). In Locke's view, men's abilities are equal, but since they exercise their abilities in different degrees, some acquire more knowledge and ideas than others. This is one of the main themes of The Conduct of Understanding (sects., 4ff.). But we find the same combination of egalitarianism and libertarianism in Locke's discourse on property and government. In the beginning of the world, every man was able to acquire a property in external goods by exercising an equal labour-power. But "different degrees of Industry were apt to give Men Possessions in different Proportions" (ST, 48).

It is not my task to carry on a meta-discourse by discussing more parallels, and bringing out more themes and concepts common to Locke's discourses. That is the task of future commentators. I have shown that my picture of sharply-bounded, horizontally-linked discourses can be enriched by further discovery of common themes and their parallel expressions. The centrality of the concept of power in Locke's thought has been confirmed, and I have clarified his general understanding of the relationship of power and its exercise to enrich my picture of his discourses.

As I said before, we cannot expect to derive unlimited enlightenment from our future meta-discourse. Locke's discourses are sharply bounded, and specific doctrines developed within one territory have frequently nothing to do with doctrines of another territory. The horizontal links between his discourses are not epistemological links. They are Locke's basic modes of thinking (e.g., the limits of power); his practical concerns (e.g., the end of disputes); or his beliefs (e.g., men's equal abilities). If we can show more horizontal links in the future, it will help us see the basic coherence of Locke's

discourses. But it should be remembered that those horizontal links are difficult to find. There are not many such links.

Finally, let us ask whether Locke can be called a "systematic" philosopher. Though he has certain basic methods of handling distinct subject-matters, the epithet "systematic" is not appropriate for Locke. He is an "analytic" philosopher in the sense that he is preoccupied with distinguishing and separating one thing from another rather than uniting one thing with another. A "systematic" philosopher of the 17th century is Leibniz, who criticized Locke's tripartite division of the sciences in New Essays on Human Understanding. The "chief problem" of his division of the sciences, says Leibniz, is that "each of the branches appears to engulf the others". Locke's "three great provinces" are "perpetually at war with one another because each of them keeps encroaching on the rights of the others". What Leibniz has in mind is that such encroachment is bound to take place in any systematic and constructive treatment of a subject-matter. He concludes: the divided sciences should not be conceived "as distinct sciences but rather as different ways in which one can organize the same truths, if one sees fit to express them more than once".<sup>38</sup> Had Locke lived longer to see Leibniz' New Essays, he might have sent him his meta-philosophical reply across the channel. He might have replied: "My chief business, or concernment, is critical rather than constructive. Unlike continental metaphysicians who meddle with a number of things, I prefer to work on properly and narrowly divided subject-matters, and render each subject-matter its due".

1. Max Milam, "Epistemological Basis of Locke's Idea of Property", Western Political Quarterly, XX, 1 (1967). John Yolton, Locke and the Compass of Human Understanding (London: C. U. P., 1970), Chap. 8. James Tully, A Discourse on Property (Cambridge: C. U. P., 1980), Chap. 1.
2. The metaphors I use here are all too famous, and the point of my use will become clear in the course of my discussion. For the sources of the Marxian metaphor, see various writings of Marx; for instance, his Doctoral Dissertation where a religious man is said to be "a victim of fictions and abstractions", or his Introduction to the Critique of Hegel's Philosophy of Right where a man in an "inverted world" is said to hold on to "illusory happiness". Quoted from Writings of the young Marx on Philosophy and Society, trans. & ed. Easton and Guddat (New York: Doubleday Anchor, 1967), p. 65 & pp. 250ff. Or see Capital, Ch. 1 Sect. 4, "The Fetishism of Commodities and the Secret thereof".  
  
As for Wittgenstein, see his Philosophical Investigations (New York: Macmillan, 1953), sects. 115 & 309. "A picture held us captive" (sect. 115); and "What is your aim in philosophy? - To shew the fly the way out of the fly-bottle" (sect. 309).
3. Laslett's view of the relationship between the Essay and the Two Treatises is presented in his long Introduction to his critical edition of Two Treatises of Government, IV, 2 ("Locke the Philosopher and Locke the Political Theorist"). Tully explicitly refers to Laslett's view in his discussion of the "contribution" of the Essay. See Tully, op. cit., p. 8.
4. Milam, op. cit., p. 22.
5. Ibid., p. 24.
6. Francis Hutcheson, A System of Moral Philosophy (Glasgow: R. & A. Foulis, 1755), p. 318.
7. Yolton, op. cit., p. 184 n.
8. Ibid., p. 184.
9. Ibid.
10. Ibid., p. 185.
11. Ibid., p. 187.
12. Ibid., p. 195.
13. Tully, op. cit., p. 8.
14. Ibid., p. 7.

15. I shall quote from the fourth edition of Pufendorf's work, Of the Law of Nature and Nations, which contains Barbeyrac's discourse. The descriptive title of the work is the following: Of the Law of Nature and Nations. Eight Books. Written in LATIN by the Baron Pufendorf..../Done into ENGLISH by BASIL KENNETT..../The Fourth Edition, carefully corrected./ To which is now prefixed M. Barbeyrac's Prefatory DISCOURSE, CONTAINING An Historical and Critical Account of the SCIENCE of MORALITY, and the Progress it has made in the World, from the earliest Times down to the Publication of this Work./ Done into English by Mr. Carew .... LONDON, Printed for J. and J. KLAPTON, J. Darby, .... MDCCXXVIII.

I thank the staff of the Special Collection Room of Edinburgh University Library for permitting me access to this work. Barbeyrac's Discourse was originally published as a preface to his French translation of Pufendorf's work (Amsterdam, 1706).

16. Barbeyrac, Discourse, Sect. 1, p. 1.
17. Ibid., Sect. 2, pp. 3f.
18. Ibid., Sect. 2, p. 4.
19. Ibid., Sect. 2, p. 5.
20. Ibid., Sect. 1, p. 1.
21. Ibid., Sects. 3 & 4, pp. 6ff. Barbeyrac replies to Montaigne that our perplexities about moral laws arise from "Interest", "Prejudices of Infancy, Education, or Custom", though moral laws themselves are "not obscure at all" (p. 6 & p. 8). He also quotes Locke, one of "the most able Philosophers", in order to reject the claim that morality cannot be demonstrated because of "the great Diversity of Opinions amongst Men" (Sect. 4).
22. Tully also makes an illegitimate use of Barbeyrac, in order to connect 17th-century natural-law political theories with Locke's epistemology and/or another 17th-century epistemology.

He ascribes to Barbeyrac the view that "the superiority of the seventeenth-century natural law writers rests on their reconstruction of political theory on the basis of a new epistemology introduced by Francis Bacon" (Tully, op. cit., p. 6). But in fact, Barbeyrac does not discuss the significance of Bacon's "epistemology". What he says is that Bacon tried to improve the imperfect state of philosophy, and that "we have Reason to believe, that 'twas the reading of the Works of this great Man, that inspir'd Hugo Grotius, with the Thoughts of attempting the first to compose a System of the Law of Nature" (Barbeyrac, op. cit., p. 79). All Barbeyrac is claiming is that Bacon's scientific spirit, or his spirit of systematic

treatment, probably inspired Grotius. Barbeyrac's comment in this context has nothing to do with a "new epistemology" of the 17th century. He only mentions Bacon, and refers to Grotius as "the first who broke the Ice" in a systematic treatment of morality. Then he goes on to say that though Hobbes created many enemies, "no one had ever yet penetrated so far into the Foundations of Civil Polity" (Ibid., p. 80). What Barbeyrac is describing is the development of a systematic treatment of "morality" in the broadest sense of ethics, natural law, and politics, and not its epistemological foundations. See Barbeyrac's Discourse, Sect. 39, "Of the most celebrated Moral Writers of the Seventeenth Century, (when Morality was much improv'd beyond what it had ever been before, and reduc'd into a System)". Additionally, Barbeyrac makes no mention of Locke in this section because the "celebrated moral writers" he discusses are those who theorized before the publication of Pufendorf's De Jure Naturae et Gentium.

Tully also tries to connect Locke's discussion of modes and relations with his, and the 17th century's, systematic treatment of "morality" by the wildest method imaginable. He quotes from Barbeyrac the following remark: "In a System of the Law of Nature an author ought, without Dispute, to begin with instructing his Reader in the Nature of Moral Entities or Beings" (Tully, op. cit., p. 9). Then he mysteriously believes that this remark establishes a connection between Locke's epistemology and his, and the 17th century's, political theory. Barbeyrac's remark, quoted by Tully, has nothing to do with epistemology, let alone Locke. The point of Barbeyrac's remark is that whereas Pufendorf begins his systematic treatment of "morality" by explaining "the Nature of moral Entities", "the Principles and different Qualities of human Actions", etc., "we meet with scarce any Thing in Grotius, relating to all these Matters". Grotius "saw what was the fundamental Principles of the Law of Nature". But he "only points this out in his Preface and in such a way as to make readers to suspect that Grotius' ideas on this matter are not clear". (Quotations are from Barbeyrac, op. cit., p. 84). Not epistemological foundations, but the fundamental principles of the law of nature ought to be stated at the beginning of any systematic treatise on the law of nature; and since Grotius fails to do this, Barbeyrac thinks it is a defect of his work. No epistemology is at issue. A connection with Locke is not even hinted at. I cannot help wondering if Tully ever read Barbeyrac. Yet he claims that he proceeds to discuss Locke "in an historically more sensitive manner" than most commentators! (Tully, op. cit., p. 8.)

23. Tully believes - wrongly - that "Yolton has already broken turf in this area [of establishing a link between Locke's epistemology and his political theory] with his excellent discussion of Locke's

theory of property as an application of the kind of conceptual analysis recommended in the Essay" (op. cit., p. 8).

24. Tully, op. cit., p. 28.
25. Ibid., pp. 22ff.
26. Ibid., p. 33.
27. Ibid., p. 8. Tully comments on the relationship between the Essay and the Treatises by multiplying undefined expressions such as 'implicatory series', 'supportive', 'ground' and 'underpinning'.
28. See Essays on the Law of Nature, the fourth essay. For a successful attempt to show the coherence of Locke's view of the law of nature and his attack on innate ideas and principles, see Hans Aarsleff, "The State of Nature and the Nature of Man", John Locke: Problems and Perspectives, ed. Yolton (London: C. U. P., 1969), especially, pp. 127ff. Aarsleff rescues Locke from careless interpreters of Locke's doctrine of the law of nature such as Laslett and Vaughan.
29. Laslett's Introduction to the Two Treatises (2nd ed. 1967; rpt. London: C. U. P., 1970), p. 50.
30. Laslett's Introduction to the Two Treatises, pp. 58-65. Also see my discussion in Appendix 1.
31. For this reference to Vaihinger, I am indebted to Richard Rorty's Philosophy and the Mirror of Nature (Princeton: Princeton University Press, 1979), p. 135, n. 5. Hans Vaihinger's view is found in his "Über den Ursprung des Wortes 'Erkenntnistheorie'", Philosophische Monatshefte, vol. XXII (Leipzig, 1876).
32. For a brief account of the emergence of "epistemology" as the foundational discipline, see Rorty, op. cit., Ch. 3. Rorty, however, mistakenly treats Locke as the founder of the foundationalist picture of philosophy. I refer to Rorty here, not because he makes this mistake; but because he elucidates the role of neo-Kantians in the formation of the epistemology-centred picture of philosophy.

Let me point out a pitfall of the neo-Kantian reading of the Essay. In the Epistle to the Reader, Locke says that he proposed to his friends that a critical examination of our intellectual powers should be their "first Enquiry", an inquiry "before [they] set [themselves] upon Enquiries" of that [perplexing] Nature" (p. 7). It is hardly likely that Locke made this proposal because "epistemology" is the "first" philosophy, or the foundational discipline upon which the rest

of human culture depends. He made the proposal because he detected a great deal of loose, rhetorical, metaphysical and theological talk in the discussion of God, revealed religion, and the foundations of morality. This, he felt, was intellectually futile. Locke himself says, if "we know our own Strength, we shall the better know what to undertake with hopes of Success" (I, i, 6). Or he may have been genuinely interested in the operation of understanding, even apart from various religious, metaphysical, theological and moral issues, because "the Understanding that sets Man above the rest of sensible Beings, and gives him all the Advantage and Domion" (I, i, 1). There may be other reasons as well. But there is no evidence to suggest that Locke had a meta-philosophical view that "epistemology" is the queen of philosophy which supports other "branches" of philosophy such as metaphysics and ethics, or the rest of human culture in general.

33. I mention Kant and the early Wittgenstein here, because of their predominant concern with limits. According to Kant, the "true purpose" of philosophy is "to expose the illusions of a reason that forgets its limits", and to "recall it from its presumptuous speculative pursuits to modest but thorough self-knowledge". See Critique of Pure Reason (A 735, B 763); my quotation is from Norman Kemp Smith's translation (New York: St. Martin's Press, 1965), p. 591. Wittgenstein's early philosophy is a critique of language rather than of pure reason. In his Preface to Tractatus, Wittgenstein states: "the aim of the book is to set a limit to thought, or rather - not to thought, but to the expression of thoughts". See Tractatus (London: Routledge & Kegan Paul, 1961), p. 3. Just as Locke was preoccupied with the limits of things in his personal life, Wittgenstein was also preoccupied with the limits of things in his personal life. See Malcolm's report of Wittgenstein's frequent exclamation, "Leave that bloody thing alone!" Ludwig Wittgenstein: A Memoir (Oxford, O. U. P., 1962), p. 85. Locke's equivalent is: no one ought to "meddle" with that bloody thing! Though Wittgenstein's philosophy radically differs from Locke's in many respects, its concern with limits shows a curious resemblance to Locke's.
34. Rosalie Colie states: "Locke's constant use of phrases indicating neglect of a subject or its enlargement in another place is distracting, because also he does not always tell us why he neglects or where the largement can be found". See Rosalie Colie, "The essayist in his Essay", John Locke: Problems and Perspectives, ed. Yolton (London: C. U. P., 1969), p. 256. Colie, however, does not explain why Locke constantly indicates neglect of a subject or its enlargement.



35. Locke's complaint is that James Tyrrell impudently meddled with his affairs, in trying to procure from James II a pardon which he himself did not request. For an account of the worsening of the Locke-Tyrrell relationship, see Cranston's biography, John Locke (London: Longmans, 1957), pp. 298-302.
36. Let us consider here one methodological principle of the Essay which might be re-interpreted as relevant to the method Locke uses in his political theory. We can extract from the Essay the principle or doctrine that we must always ascribe power to an agent in order to account for any observed change. Locke remarks: "whatever Change is observed, the Mind must collect a Power somewhere" (II, xxi, 4). If we extract this principle, then stubborn foundationalists might be tempted to link it to Locke's political theory. If they do link one to the other, they create another fictitious basis.

Let us anticipate their invention here. They might claim something like the following: Locke's political theory explains various changes observed in the state of nature, the original community of things, a political society, etc. In the Second Treatise, Locke explains these changes by ascribing power to various agents. For instance, he explains the change of the original community into the world of property by ascribing labour-power to every man. Thus Locke's procedure in his political theory is justified by the methodological principle which he mentions in the Essay.

What shall we say to this account? I have made it as plausible as possible. Yet it remains an attempt to create a fictitious basis of Locke's political theory. A great deal of arbitrariness and distortion is involved in this account. It is likely that Locke used the concept of power in his political theory because his predecessors (such as Grotius, Hobbes and Pufendorf) had already used the concept of power, or potestas, in their political theories. He also used the concept of power because it simply was the central category of his thought. There is no evidence to suggest that Locke's use of the concept of power in his political theory is the result of his adoption of the principle that we must always ascribe power to an agent in order to account for any observed change. Logically speaking, too, Locke can certainly use the concept of power without committing himself to this principle at the same time. Also, his political theory is not always an account of the changes which he has observed empirically; rather, he presents his theory in a developmental manner. The principle I have quoted is, as a matter of fact, only half of Locke's statement. His full statement is: "the Mind must collect a Power somewhere, able to make that [observed] Change, as well as a possibility in the thing itself to receive it" (Essay, II, xxi, 4). But Locke does not consider, in the Second Treatise, a possibility to receive a change.

The foundationalist account which I have anticipated above is just as illusory as any other attempt to relate the Essay to the Second Treatise by the picture of epistemological foundations. It is true that Locke used the concept of power as a fundamental category in his political theory as well as his epistemology. But it is false that he applied a methodological principle of the Essay to the Second Treatise. If we produce the kind of as-if account which I have discussed above, it can only give us illusory happiness. This sort of reconstruction does not enlighten us.

37. Hans Aarsleff, "The State of Nature and the Nature of Man"; and Raymond Polin, "John Locke's Conception of Freedom". These two articles are found in John Locke: Problems and Perspectives (London: C. U. P., 1969).
38. G. W. Leibniz, New Essays on Human Understanding, trans. & ed. P. Remnant & J. Bennett (Cambridge: C. U. P., 1982), pp. 522-525. The page numbers of this abridged edition correspond to those in the Akademie-Verlag edition of the French text.

### Appendix 3

Locke's Ego-Centric Concept of Property, with  
Special Reference to 20th-Century Commentators  
and 17th-Century Theorists

Appendix 3:      Locke's Ego-Centric Concept of Property, with  
Special Reference to 20th-Century Commentators  
and 17th-Century Theorists

The purpose of this Appendix is to supplement the analysis of Locke's concept of property which I have offered in CHAPTER 3, PART 2 (An Analysis of Locke's Concept of Property). In my analysis, I have clarified the "ego-centric" (or "agent-centred") structure of Locke's concept of property. In this Appendix, I shall supplement my analysis by undertaking two distinct tasks.

First, I shall briefly and critically survey the 20th-century commentators' inadequate understanding of Locke's concept of property. Not many commentators have drawn attention to his concept of property. Fewer have touched upon the ego-centric structure of his concept. None has offered the kind of detailed analysis which I have given. I shall briefly discuss what other commentators have thought about Locke's concept of property. Secondly, I shall show that contrary to our impression, Locke's concept of property is uniquely ego-centric among major 17th-century theorists. I shall contrast his concept with Hobbes', Grotius' and Pufendorf's concept of property, in order to show that Locke is the first major 17th-century theorist who has adopted the full-blooded, ego-centric concept of property.

These two tasks are distinct from each other, so I shall divide the following discussion into two sections. In the first section, I shall compare my analysis of Locke's concept of property with some 20th-century commentators' treatment of it. In the second section, I shall contrast Locke's concept of property with Hobbes', Grotius', and Pufendorf's concept of property. By comparison and contrast, I shall supplement and elaborate my analysis of the ego-centric structure of

Locke's concept of property. Since the following discussion is meant to be a supplement to my own analysis of his concept of property, it should be read in conjunction with what I have said in CHAPTER 3, PART 2. The outline of my analysis can be found in Section 2. 1 of CHAPTER 3 (2. 1 The Ego-Centric Structure of Property: An Outline).

(i) Locke's Ego-Centric Concept of Property, and  
20th-Century Commentators

Commentators on Locke in this century — philosophers, scholars, and critics who have studied and made use of Locke's political theory — have largely concentrated on Locke's account of appropriation. On the whole, they have not been interested in clarifying what Locke meant by the word "property", or what philosophical assumptions underlie the meaning he attached to it. The "two-sense" doctrine has been popular among professional commentators on Locke.<sup>1</sup> Those who have seized upon Locke's idea that "property" is an "exclusive" right have thought that it is a right to exclude others. So they have failed to grasp the point that "a right of disposal" is "exclusive" in the sense that the holder of this right, rather than any other man, is the legitimate disposer of his objects.<sup>2</sup>

The first important step toward the correct understanding of Locke's concept of property is to understand the focal meaning of "disposal" as "control" or "arrangement". Since the word "disposal" has flexible meaning, we are likely to forget that Locke used the expression "dispose (of)" in the manner reminiscent of its Latin root. "Dispōnere" is to "put" (pōnere) things "in different directions" (dis). This etymology nicely fits into Locke's philosophical idea that the mind of each man is the central-decision making agent, or the director

of his actions, objects, and affairs. Locke's talk about "disposal", however, has misled some commentators. Those commentators who have been misled are not aware of the focal meaning of "disposal" which Locke made use of.

Let us first see two examples of the failure to understand Locke's focal meaning of "disposal". I shall refer to two commentators who are professionally competent to discuss Locke, and have actually commented on his concept of property.

In his attempt to clarify Locke's concept of property, J. P. Day uses a curious "Argument from the Paradigm Case". Day remarks: "the paradigm case of ownership (of X)" is "the powers of exclusive use, including the destruction, of X". Having remarked thus, he argues — or believes, rather — that Locke must have subscribed to this "paradigm case".<sup>3</sup> It is clear that this "argument" is nothing but the assumption that Locke must have subscribed to our, or Day's, paradigm case. Day's remark is typical of anyone who fails to understand Locke's focal meaning of "disposal". He goes on to criticize Locke for being inconsistent, on the assumption that Locke in fact shared Day's paradigm case. In Day's view, Locke inconsistently held: (a) the law of nature prohibits suicide (ST, 6), and (b) every man by nature has "a property in" his person (ST, 27). The charge of inconsistency is based on the "paradigm case" of property according to which the owner of property has a power to destroy his objects.<sup>4</sup>

This charge of inconsistency is misplaced. Locke emphatically repeats that man "has not liberty to destroy himself" (ST, 6), or he "cannot take away his own life" (23). Given his emphatic claim, there is no reason to assume that Locke contradicts it by saying that every man has a property in his person. The assumption arises only if we

lazily avoid clarifying Locke's idea of "disposal", and become preoccupied with our paradigm case (of getting rid of Coca Cola and other consumable goods which Day is accustomed to getting rid of). Day's innocuous use of the Argument from the Paradigm Case is simply a failure to understand Locke's paradigm case, i.e., the case where every man has a liberty (or power) to control and arrange his life (liberty, and possessions), according to the will which he guides by his understanding. Each man's "understanding" enables him to learn what the law of nature requires; hence, he learns that he ought not to commit suicide.

C. B. Macpherson claims that property, for Locke, is "not only a right to enjoy or use; it is a right to dispose of, to exchange, to alienate". He defends this claim by saying that this is the "bourgeois" concept of property, and assuming that Locke is a bourgeois theorist.<sup>5</sup> Macpherson is correct in thinking that Locke is a bourgeois theorist and has a bourgeois concept of property. But he is wrong in identifying what the "bourgeois" concept of property is. He is also wrong in believing that the focal meaning of Locke's "disposal" is "exchange", e.g., a voluntary exchange of one's labour-power for wages, or a voluntary exchange of one's own goods for money. As I have said, the focal meaning of "disposal" for Locke is "control" or "arrangement". A man's voluntary transfer of his person or his goods is a way of arranging them, according to the decision of his mind. What makes Locke's concept distinctively "bourgeois" is not that he takes "transfer" as the core of the concept of "property", nor is it the fact that he treats a bundle of rights as a unitary "property". His concept of property is "bourgeois" because he fails to see that a voluntary transfer of one's property (i.e., an exercise of the right of transfer)

in a free market economy can become a way of losing control over his person or his goods; that is, it can conflict with the central idea of property, a right to control or arrange one's objects as one thinks fit. Locke certainly did not see, as Marx later did, that a "voluntary" exchange of one's person or goods in civil society could dialectically turn into the loss of control, "alienation" or Entfremdung. This is not a place to criticize Locke.<sup>6</sup> I simply note here Macpherson's misunderstanding of Locke's "bourgeois" concept of property. As far as Locke is concerned, a right of transfer is compatible with, and a part of, the idea of an exclusive right of disposal (i.e., control or arrangement).

Of the scholars and philosophers who commented on Locke in English, there are two who understood the ego-centric structure of Locke's concept of property. K. Olivecrona hits upon Locke's idea that each man's mind, or his ego, is located at the centre of his legitimate sphere of control, when he discusses Grotius' and Pufendorf's idea of something's being one's "own", or suum. Olivecrona rightly points out that for Grotius, Pufendorf, and Locke, "the 'I' to which those goods [i.e., my life, liberty, possessions, etc.] belonged was evidently the spiritual ego".<sup>7</sup> Olivecrona does not offer an analysis of the ego-centric structure of Locke's concept, but my analysis shows that his remark is correct. Unfortunately, Olivecrona misapplies his important insight, and wrongly ascribes to Locke the quasi-Hegelian view that a man's labour is a legitimate means of acquiring "property" (i.e., a property in external goods) because he infuses his spiritual ego into external goods.<sup>8</sup> Locke does not hold that a man's coming to have "a property in" external goods is justified on the ground of the infusion of his spiritual ego. My analysis of the ego-centric structure of



Locke's concept should not be confused with a distinct question about the justification of a particular method of appropriation. All I have shown is that given that a man has "a property in" his person and his goods, certain conceptual relationships hold between his mind (or his ego) on the one hand, and his "objects" (i.e., his body, actions, and goods, or his life, liberty and possessions) on the other hand. Locke does say that "something that is his own" is "joined" to an external good by his labour. So we might conjecture that a man's ego is joined to an external good. But he never says so, and justifies a man's appropriation by labour on the grounds of his "pains", "improvement", and so forth (ST, 30, 34, et passim). What is clear, however, is that once an external object becomes a man's property, it is related to his ego just in the same way that his "person" (his life and liberty, or his body and actions) are related to it. This is what Olivecrona should have claimed, and what I do claim.

The ego-centricity of Locke's concept of property is fairly clear to R. Nozick who self-consciously assimilates his concept of property to Locke's. Instead of commenting directly on Locke, Nozick puts forward his own view as follows:

The central core of the notion of a property right in X, relative to which other parts of the notion are to be explained, is the right to determine what shall be done with X; the right to choose which of the constrained set of options concerning X shall be realized or attempted. The constraints are set by other principles or laws operating in the society ... My property rights in my knife allow me to leave it where I will, but not in your chest.<sup>9</sup>

In this passage, Nozick echoes Locke's view that the core of property is a right of disposal, i.e., of control and arrangement according to one's choice. The degree by which one can control or arrange objects (e.g., one's "knife") is constrained by the laws one is under. In this

respect Nozick is the true heir of Locke's concept of property. He himself is aware that he is resurrecting Locke's concept of property. Referring to the passage I have quoted, he says that this "notion of property helps us to understand why earlier theorists spoke of people as having property in themselves and their labour".<sup>10</sup> Nozick himself does not offer any analysis of what he identifies as "the central core of the notion of a property right in X". My analysis of the core of Locke's ego-centric concept of property (CHAPTER 3, Section 2. 2) would suffice as an analysis of what Nozick calls "the central core" of the notion of a property right in X.

Even Nozick, however, does not recognize one peculiar feature of Locke's ego-centric concept of property. For Locke, a man can be said to have "a property in" his objects even if the existence of other men is unreal to him. Nozick, being a libertarian in America, absorbs or swallows this element of Locke's concept of property, without realizing that this feature makes his concept ego-centric in a full-blooded sense. It is true that the story of Robinson Crusoe is still popular in the vast continent of the United States.<sup>11</sup> But it is not true that the ego-centric concept of Locke's kind is the only concept available to us, as Nozick leads us to believe. Even among the 17th-century theorists to which Nozick alludes, Locke is unique in holding the strongly ego-centric concept of property. This we shall see in the next section.

(ii) Locke's Ego-Centric Concept of Property,  
and 17th-Century Theorists

Even among major 17th-century theorists, Locke is unique in holding that each man is confronted with his disposable objects, rather

than any human being who is real to him. Hobbes holds that every man in the state of nature is confronted with every other man, as a wolf is confronted with another wolf. Grotius and Pufendorf, though they presuppose that a man's ego is the centre of disposable objects, are nevertheless committed to the view that a property (in external goods) is the creation of a tacit, or explicit, compact of all men. Though Hobbes, Grotius and Pufendorf can be said to have "individualistic" theories of man and society (in the conventional sense of "individualistic"), they treat each man primarily as a man among other men rather than as a man related to his external goods. By contrast, Locke attempts to show "how Men might come to have a property in several parts of that which God gave to Mankind in common", "without any express Compact of all the Commoners" (ST, 25). The existence of all the "commoners" is imagined by each appropriator who appropriates a portion of the world. Each appropriator does not encounter with any other real human being when he appropriates.

Locke is the first major theorist who developed the ego-centric concept of property in a full-blooded sense. Though Hobbes was concerned about the distinction between mine and thine in his own way, his main preoccupation lay with the other-directed concepts of justice and injustice. "Justice, and Injustice", says Hobbes, "are none of the Faculties neither of the Body, nor Mind. ... They are Qualities, that relate to men in Society, not in Solitude" (Leviathan, Ch. XIII, p. 188). Grotius is the first modern theorist who made a bold attempt to relegate the status of "justice" to a handmaiden of "right". This innovation, like so many modern philosophical innovations, was brought about by an act of declaration rather than any argument. "A right"

(jus) "in the proper and strict sense" of the word, says Grotius, refers to a person; it signifies a perfect "moral Quality in any person, sufficient to enable him justly to have or to do something" (De Jure Belli, 1. 1. 4). This perfect moral quality, which Grotius calls the "Faculty", comprehends four powers: a power over oneself (libertas), a power over others, ownership (dominium), and a power to demand the payment of a debt (1. 1. 5). Dominium, he adds, is what civilians traditionally called suum ("his own"). These statements sound innovative enough, and it is clear that Grotius transforms "a right" into the faculty which a man has, or a kind of occult quality which he has. For this reason, recent scholars (Richard Tuck and John Finnis) have suggested that Grotius' "right" is the power which an individual man has independently of any normative rule binding on men. They have also hinted that Grotius anticipated Nozick's view that each individual simply has a right, as a kind of possessions.<sup>12</sup> This interpretation must be qualified, however. Grotius' concept of a property in external things (or dominium) is less ego-centric than Locke's (or Nozick's).

Unlike Locke, Grotius is fully committed to the Stoic ideal of social harmony, and he treats each owner of external goods as being confronted with other real human beings. He does not treat each owner as a Robinson Crusoe who imagines the existence of other men. His definition of "a right", as I quoted, contains the terms "justly". "Justice" in turn means, primarily, "our abstinence from that which is another's" (Prolegomena, 8); justice "consists in abstaining from what is another man's" whereas injustice is "nothing else but the detention of another man's Right" (Prolegomena, 44). "What is another man's" here means what another man has by his "right", or his "faculty", or his perfect "moral quality". It seems that Grotius defines "justice" in

terms of a man's prior "right", and then circularly defines "right" in terms of "justice" (or "justly"). However, his claim is fairly clear. Justice presupposes a "right", and if a man has a right over certain objects (e.g., his external goods), then this right also enables him sufficiently to make other men abstain from those objects (e.g., his external goods). A man's right of property for Grotius, in the last analysis, is not only his power to dispose of his goods but his power to request other men to abstain from his goods. Insofar as it implies a man's power to exclude others, it is an other-directed concept. This is why Grotius claims that the right of property is the creation of a tacit, or explicit, compact of all men. He says that external goods become a man's property (or the object of his "faculty") "Not by the sole act of the Mind" but by "compact, or agreement, ... either express, ... or tacite" (2. 2. 5). Property cannot be created by a single act of the mind, since "no man could possibly know what another would have to be his own, that he might forbear it" (2. 2. 5). This view is in sharp contrast with Locke's view that a single man can appropriate merely by mixing his labour, and without the presence of other men.

It is plausible that Grotius, if pressed, would have said that a property right is unintelligible without a plurality of men. Pufendorf, who takes over Grotius' idea of "a right" as "a moral quality" and is equally committed to the Stoic idea of social harmony, explicitly states that property ownership is not "intelligible before more than one man has come into being" (De Jure Naturae [A], 4. 4. 3). Property, according to Pufendorf, implies "an exclusion of others" and presupposes that there are "more men than one in the world";

"things could not be said to be proper to a man, if he were the only being in the world" (4. 4. 3). This view is reinforced by the claim that the right of property, like any other right, is "a moral quality". By this Pufendorf means that a man's right of property is his power to dispose of his goods, with "a moral effect" on other men — namely, with the effect of imposing on other men the obligation to abstain from his goods (1. 1. 19; 4. 4. 1; 4. 4. 9). Since this "moral effect" is constitutive of a man's right, the right of property cannot be created by a man's "external act or seizure" alone, but this act must be preceded by an implicit, or explicit, pact of all men (4. 4. 9). This view is again markedly different from Locke's. Locke simply discards the Grotius-Pufendorf notion of "a right" as "a moral quality". Furthermore, his "exclusive right of disposal" excludes imagined or potential human beings in the sense that they simply have no right to the objects of his right of disposal.

It is clear, then, that Locke is unique among major 17th-century theorists in holding the radically ego-centric concept of property. Even if there is only one man in the world, Locke's concept of property remains intelligible as long as other human beings are imagined to exist. Locke's individual man has a right to dispose of an external good to the exclusion of the right of any potentially existing man, and independently of any contact or compact with other men. Of course, there may be many minor theorists in the 17th-century who adopted the full-blooded, ego-centric concept of property similar to Locke's. But the idea that Locke's ego-centric concept of property was universally accepted in the 17th-century is, simply, a myth.

1. See Note 8 to Chapter 3, and my discussion at the beginning of Section 1. 2 of Chapter 3.
2. See Note 15 to Chapter 3, and my comment at the beginning of Section 2. 1 of Chapter 3.
3. J. P. Day, "Locke on Property", Life, Liberty and Property (Belmont: Wadsworth, 1971), p. 113.
4. Ibid., p. 117.
5. C. B. Macpherson, The Political Theory of Possessive Individualism (Oxford: O. U. P., 1962), pp 214 ff.

He says:

the more emphatically labour is asserted to be a property, the more it is to be understood to be alienable. For property in the bourgeois sense is not only a right to enjoy or use; it is a right to dispose of, exchange, to alienate. To Locke a man's labour is so unquestionably his own property that he may freely sell it for wages (pp. 214 ff.). (emphasis added).

6. Locke is not at all aware of a possible conflict between a right of control and a right of transfer. In discussing the transfer of labour and money in Considerations of the Lowering of Interest, and Raising the Value of Money, he assumes that the two rights can both be effectively exercised in free-market economy. The Marxian notion of the loss of control through "voluntary" transfer is entirely alien to Locke. He remarks:

[money] by compact transfers that profit, that was the reward of one man's labour, into another man's pocket. That which occasions this is the unequal distribution of money (Considerations, Works, V, 36).

Nothing is farther from Locke's intention than saying this is a form of robbery, or a loss of control over one's product. As he explicitly states in the Second Treatise, men give a tacit consent to the use of money (ST, 47, 48, et passim). Locke always wants to treat social arrangements as the product of each individual man's act and free will. He does not want to treat one man's actual subjection to another man sociologically. The "Authority of the Rich Proprietor, and the Subjection of the Needy Beggar began not from the Possession of the Lord, but the Consent of the poor Man, who prefer'd being his Subject to starving" (FT, 43). This statement appears in the context where Locke says that nobody ought to be another man's "Vassal" (FT, 42). Thus Locke's moralism of independence goes hand in hand with his sociological naivete.

7. Olivecrona, "Locke's Theory of Appropriation", The Philosophical Quarterly 24 (1974), p. 223.
8. Ibid., pp. 225 ff.
9. R. Nozick, Anarchy, State, and Utopia (New York: Basic Books, 1974), p. 171.
10. Ibid.
11. This note is devoted to a critical discussion of the relationship between Lockean ideas and a vulgar species of American libertarianism.

The contemporary, American libertarian literature makes use of the story of Robinson Crusoe to illustrate what property is, and how each man comes to have property. This use of Robinson Crusoe is found in Murray Rothbard's book, The Ethics of Liberty (Atlantic Highlands, N. J.: Humanities Press, 1982), Chapter 6 "A Crusoe Social Philosophy". Though Rothbard does not mention Locke, it is clear that he read Locke's Second Treatise and Essay. For we can find in Chapter 6 of his book a vulgar illustration of various Lockean themes. Let me quote from Rothbard's version of the story of Robinson Crusoe:

Let us consider Crusoe, who has landed on his island, and, to simplify matters, has contracted amnesia. What inescapable facts does Crusoe confront? He finds, for one thing, himself, with the primordial fact of his own consciousness and his own body. ... In fact, he begins his life in this world by knowing literally nothing; all knowledge must be learned by him ....

...

Crusoe must produce before he can consume, and so that he may consume.

...

He also discovers the natural fact of his mind's command over his body and its actions: that is, of his natural ownership over his self.

Crusoe then, owns his body; his mind is free to adopt whatever ends it wishes, and to exercise his reason in order to discover what ends he should choose ....

(The Ethics of Liberty, pp. 29-31; Emphasis in the original.)

In this passage Rothbard takes over Locke's assumptions and ideas. A man is confronted with his consciousness and his body; no knowledge is innate; production must precede consumption (cf. ST, 26); and a man's mind has command over his body and its actions (i.e., a man has a liberty of actions). Whereas Locke connects the notion of the liberty of actions with the idea of a law to form his concept of property, Rothbard equates "ownership" with the mind's non-normative power.



Here Rothbard's vulgarization of Locke becomes obvious.

American libertarians take over certain Lockean themes, without giving any critical consideration to what Locke said. Locke may be considered the innovator in the history of the concept of property. Some of his mistakes – for instance, his view that the life of a primitive man was like that of a Robinson Crusoe in the wilderness of the American Continent – might be excused as the product of the late 17th century. But there is no excuse for the 20th-century American libertarians who treat a man's isolation (and amnesia!) as the basic mode of life rather than an anomaly in healthy human life. The libertarian literature in the U. S. today adds nothing important to Locke. It magnifies some of the difficulties inherent in his account of appropriation and his concept of property. It transforms some of Locke's difficulties into manifest absurdities. So it is much easier to criticize what is stated in the vulgar species of American literature today than what is stated by Locke. Let me perform this task very briefly.

Is it the case that Crusoe must produce before he can consume, and in order to consume? This is an extremely naive view. If Crusoe is alive, he must be consuming something already. But does that mean consumption must precede production? If we say "yes", we commit ourselves to another naive view. To state the matter simply, production and consumption are merely two aspects of a man's continuous interaction – or "metabolism" – with nature. A man produces and reproduces his body by consuming food and drink; he produces tools by consuming a part of external nature and his mental and physical energy; and so on. What we can say about Crusoe's mode of life in general terms is that he must remain in constant exchange with nature, in order to survive. To say that he must produce before he can consume is to take an arbitrary viewpoint that he can begin a new process – the process of production – without prior consumption (or production, consumption, production, et ad infinitum). What Rothbard really wishes to say is that a man in Crusoe's situation should produce actively (rather than die or merely consume plants). But this is a distinct claim which may, or may not be justified. At any rate it is irrelevant to our discussion. Production must precede consumption – this is not a "primordial fact" of human existence.

Secondly, ownership is not the mind's power to command his body, or its actions, or external goods. If this were the case, ownership would disappear as soon as a man's mind fails to control those objects. If Crusoe stumbles on a rock, he ceases to be able to control the movement of his body by the mind. Does he cease to be an owner of his body then? No. Or if he becomes ill and cannot exercise the power of his mind effectively, does he cease to own his cottage? No. Or if a slave (e.g., Friday) can move his body according to the direction of his mind, does it mean he is the owner of his body? No.

If a slave is already the "owner" of his body in this simple manner, there is no need to emancipate him - no need to make him the owner of his body. He can be said to be the "owner" of his body even in his master's house, as long as his mind retains a power to move his arm. What is needed, of course, is to think of ownership or slavery as the complex relationships which presuppose the existence or non-existence of one man's right (or power) over another. If we equate a man's non-normative, non-interpersonal, liberty of actions with his ownership, then we must say that we all lose "ownership" by drinking Scotch Whisky at home and getting intoxicated. But who wants to drink Scotch Whisky at home, if he ceases to own his house (temporarily or otherwise) and someone else may rightfully enter the house to take everything he has previously possessed? Whatever ownership may be, it is clearly not identical with the mind's power to command certain objects.

In this long note, I have criticized Rothbard because his type of vulgar libertarianism seems to be plaguing a certain quarter of the English-speaking, intellectual world. I shall not say that all libertarians in the United States today are like him. But the vulgar species of American libertarianism, as represented by Rothbard or Rand, contributes nothing to political theory. They convert Defoe's wonderful fiction into an awkward prose, and turn some of Locke's novel ideas into simple, dogmatic slogans. Whether Robert Nozick belongs to this vulgar species of libertarians is an interesting question. Sometimes, he is a sharp, witty, and clever philosopher. But sometimes - it must be admitted - he trivializes and Americanizes Locke's ideas (in a pejorative sense of "Americanize"). In discussing the relationship of appropriation and its potential harm to others, he gives a conspicuously trivial example: "If I appropriate a grain of sand from Coney Island, no one else may now do as they will with that grain of sand. (Nozick, op. cit. p. 175). Locke does not share this conspicuous triviality with Nozick. Nozick's Robinson Crusoe fools around in Coney Island, and plays with a grain of sand. By contrast, Locke's Crusoe picks up apples and acorns for the sake of self-preservation, or else he cultivates land by his honest labour.

12. See Richard Tuck, Natural Rights Theories: Their origin and Development (Cambridge: C. U. P., 1979). Nozick is mentioned in his Introduction, and in Tuck's view, Grotius played a vital role in the development of a strongly individualistic theory of rights (Ch. 3 & Ch. 8, Ibid.). John Finnis, Natural Law and Natural Rights (Oxford: O. U. P., 1980); p. 207 for his comment on Grotius' concept of "right"; and pp. 186 for his comment on Nozick's concept of justice in relation to "the post-Cajetan" tradition of justice. Neither Tuck nor Finnis is interested in establishing a significant link between Grotius and Nozick. But I infer from what they say that Grotius' concept of rights and justice have some affinity with Nozick's concepts of rights and justice.

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The reader should note that an improved version of Appendix 1 of this dissertation is to appear in the forthcoming issue of The Locke Newsletter, No. 16 (1985).

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